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**WHEN:** April 18, 2000, at 9:00 a.m.

**WHERE:** Conference Room, Suite 700
Office of the Federal Register
800 North Capitol Street, NW.
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(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7288 of April 8, 2000**

## Pan American Day and Pan American Week, 2000

**By the President of the United States of America**

**A Proclamation**

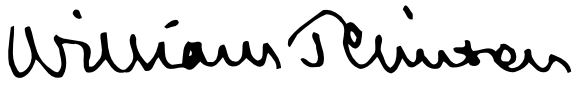
This year on Pan American Day and during Pan American Week, we celebrate the springtime of a new century in which the fundamental ideals of democracy and human rights are blossoming across our hemisphere. We stand at the threshold of a new era of economic development and prosperity with a common determination to meet the challenges and seize the opportunities that face the Americas.

Building on the agreements forged at the last two Summits of the Americas in Miami and Santiago, we are witnessing unprecedented cooperation within our hemisphere. Efforts such as the negotiations on a Free Trade Area of the Americas, now progressing toward a concrete agreement in 2005, exemplify our commitment to building a self-sustaining and widely shared prosperity. We continue to work creatively through the Organization of American States to encourage constitutional solutions to political crises such as those that occurred in Paraguay and Ecuador. And we have witnessed elections in our region that were models of civic participation and a testament to the strength and vibrancy of democratic government in the Western Hemisphere. Such achievements illustrate that the well-being of our neighbors is fundamental to our own security and prosperity. We look forward to the Third Summit of the Americas in Quebec City, where the democratically elected leaders of 34 nations from North, Central, and South America will gather to review our progress, identify new challenges, and further enhance our cooperation.

Even with our significant progress, however, challenges remain. The 34 free and democratically elected nations of this hemisphere must work together to ensure that Cuba, the only country that has not embraced our common vision, becomes a member of our community of democracies. By doing so, we can ensure that all the people in our hemisphere share in the blessings of freedom and in the promise of the global economy, living and working and raising their families in dignity and with hope for the future.

NOW, THEREFORE I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, April 14, 2000, as Pan American Day and April 9 through April 15, 2000 as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–9330
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**Proclamation 7289 of April 8, 2000**

## National Former Prisoner of War Recognition Day, 2000

**By the President of the United States of America**

**A Proclamation**

As we stand at the dawn of a new century, we reflect with pride on all that our Nation has accomplished in the 224 years since we first declared our independence. Today we enjoy unprecedented peace and prosperity, and, as it has for generations, America shines as a beacon of democracy, freedom, and opportunity for peoples around the world.

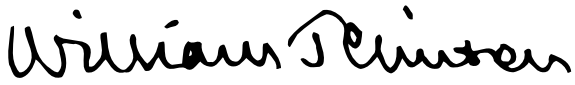
Yet the blessings we rejoice in today were won at great cost. Millions of young Americans who stepped forward in times of crisis or conflict to defend our Nation and uphold our values around the world sacrificed their freedom and lost their lives. The century just past will forever be known as the American century, not only because of our economic strength, military might, and technological prowess, but also because of the character, determination, and indomitable spirit our people demonstrated time and again.

That character and spirit have never been more evident than when Americans have been held captive as prisoners of war. Suffering hunger, fear, isolation, and uncertainty, stripped of their freedom and often subjected to physical and psychological torture, American POWs nonetheless continued to serve our Nation with honor, dignity, and remarkable courage. For many, the long, agonizing days stretched into years, and the loss of freedom and the cruel separation from family, home, and friends left scars that the passage of time can never erase.

We owe a profound debt of gratitude to these heroes who stood face to face with the forces of tyranny and oppression, true to our country and to the spirit of freedom even in captivity. We owe a debt as well to their families, whose faith and fortitude have been an unceasing source of strength to our Nation in many of our darkest hours. As we observe this special day for the first time in this new century, let us remember and honor the sacrifices of America's prisoners of war and their families; and let us keep faith with them by remaining resolute in defending liberty and securing a just and peaceful world for the generations to come.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 2000, as National Former Prisoner of War Recognition Day. I call upon all Americans to join me in remembering former American prisoners of war who suffered the hardships of enemy captivity. I also call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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# Presidential Documents

**Proclamation 7290 of April 10, 2000**

## National Crime Victims' Rights Week, 2000

**By the President of the United States of America**

**A Proclamation**

This week marks the 20th anniversary of National Crime Victims' Rights Week. Over the past two decades, we have made enormous progress in our efforts to build safer communities and to reshape our criminal justice system so that it better protects victims' rights and responds more compassionately to their needs.

In the 7 years since I first proclaimed National Crime Victims' Rights Week, my Administration has worked hard to achieve some of the most progressive criminal justice reforms in our Nation's history. Recognizing the urgent plea from millions of Americans to restore safety and security to their neighborhoods, in 1994 I signed into law the Violent Crime Control and Law Enforcement Act, which funds 100,000 additional police officers to fight crime and protect our citizens. In Federal court cases, this law also gives victims of violent crime and sexual abuse the right to speak out in court before sentencing, providing them the opportunity to describe the impact such victimization has had on their lives. To help protect our communities from gun violence, we enacted the Brady Handgun Violence Prevention Act, requiring background checks for potential handgun purchasers. Since its passage, more than 500,000 attempted gun purchases by felons, fugitives, and other prohibited persons have been prevented, saving an untold number of lives. And we worked to pass the assault weapons ban to keep these deadly firearms off our streets.

We also fought to pass the Violence Against Women Act, which addresses the complex dynamics of gender-motivated violence and seeks to ensure justice for women who live in daily fear for their safety and often for their lives. By providing support services for victims of domestic violence and sexual assault and empowering prosecutors with new tools to target offenders, we have sent a clear message that our society will not tolerate violence against women.

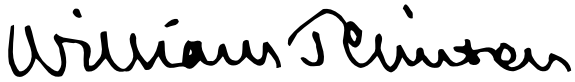
Thanks to the concerted efforts of crime victims' advocates, many of whom are survivors themselves, government at all levels is focused on ensuring victims' rights. Today, all States have enacted laws safeguarding crime victims' rights in the criminal justice process, and 32 States have amended their constitutions accordingly.

Despite this progress, millions of Americans still fall prey to criminals each year. In the past year alone, gun violence alone has taken an enormous toll across our Nation. To address this, my Administration has proposed the 21st Century Policing Initiative to provide 50,000 more police officers for our streets, requested more funding for our Safe Schools/Healthy Students Initiative to reduce school and youth violence, and put forth the largest national gun enforcement initiative in our Nation's history. I continue to call on the Congress to strengthen our Nation's hate crime laws and to pass commonsense gun legislation to keep guns out of the wrong hands; and we should pass the Victims' Rights Amendment to the Constitution.

Criminal victimization is at its lowest level in 25 years, but we can do more. As we observe National Crime Victims' Rights Week, as we near the fifth anniversary of the tragic bombing in Oklahoma City and the first anniversary of the shooting at Columbine High School, let us vow to continue working together to prevent crime and violence. Let us also pledge to honor the needs and rights of victims whose lives have been forever altered by crime. And let us recognize the courage and determination of the thousands of men and women across our country who dedicate themselves daily to the protection of victims' rights.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9 to April 15, 2000, as National Crime Victims' Rights Week. I urge all Americans to remember crime victims and their families by working to reduce violence, to assist those harmed by crime, and to make our communities and homes safer places in which to live and raise our families.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–9332
Filed 4–12–00; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

Federal Register
Vol. 65, No. 72
Thursday, April 13, 2000

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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 29

**[Docket No. TB–99–07]**

**RIN 0581–AB75**

### Tobacco Inspection; Subpart B—Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with minor formatting changes, the provisions of an interim final rule, the regulation governing the mandatory inspection of tobacco that added the term ''purchaser'' specifically to include in the regulatory text this segment of the industry from attempting to influence, impede, or discuss any matter related to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor and removed the language allowing the producer to discuss the grading of their tobacco with the inspector at the time grading is being performed. This rule incorporates recommendations made by the Flue-Cured Tobacco Advisory Committee, the Five-State Flue-Cured Tobacco Committee, and industry representatives to clarify when it is allowable for someone to communicate with the grading personnel while they are performing their actual duties. The revisions better eliminate interference, distraction, and outside influence on the grading of tobacco.

**EFFECTIVE DATE:** May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456; or Fax: (202) 205–0235.

**SUPPLEMENTARY INFORMATION:** The Department published in the **Federal Register** on September 27, 1999 (64 FR 51887) an interim final rule amending the regulation at 7 CFR part 29, subpart B. The Department requested comments on the regulation. The comment period expired on November 26, 1999. AMS received one comment from a buying segment of the tobacco industry favoring the amendments.

This final rule revises the regulation governing the mandatory inspection of tobacco pursuant to the provisions of the Tobacco Inspection Act (49 Stat. 741, 7 U.S.C. 511 *et seq.*).

The Department received recommendations from the Flue-Cured Tobacco Advisory Committee, the Five-State Flue-Cured Tobacco Committee, and industry representatives that changes to the regulation in subpart B, § 29.81(a), Interference with inspectors, is necessary to better eliminate interference, distraction, and outside influence on the grading of tobacco.

The prior regulation specified that, no person, including the owner, producer, warehouseman, agent, or employee thereof shall attempt to influence, impede, or discuss any matter relating to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor. The interim final rule does not allow any member of the industry, including tobacco purchasers, to discuss any matter pertaining to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor. Also, the interim final rule action removed language allowing a producer to discuss the grading of their tobacco with the inspector at the time grading is performed. While producers are allowed to be present when their tobacco is being graded, they cannot discuss the grade or attempt to influence or intimidate the inspector during the performance of grading duties. The interim final rule does not preclude the producer from appealing the decision of the inspector after a grade has been assigned.

This action finalizes the provisions of the interim final rule, with minor formatting changes, that added the term ''purchaser'' specifically to include in the regulatory text that segment of the industry from attempting to influence, impede, or discuss any matter related to grading while tobacco inspectors are grading tobacco on the auction warehouse floor and that removed the language allowing the producer to discuss the grading of their tobacco with the inspector at the time grading is being performed.

This final rule has been determined to be ''non significant'' for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of ''small business'' which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less that $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers and most warehouses and producers may be classified as small entities.

The Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule continues revisions that amended the regulation governing the mandatory inspection of tobacco that: (1) Added the term ''purchaser'' to specifically include in the regulatory text this segment of the industry from attempting to influence, impeding, or discussing any matter relating to grading while tobacco inspectors are grading tobacco on the auction floor and (2) removed the language allowing a producer from discussing grading of their tobacco with the inspector at the time grading is being performed. Specifying the term ''purchaser'' in the text of the regulation merely identifies a segment of the industry already

prohibited from these actions. Further, removal of language allowing producers to discuss with inspectors their tobacco will have minimal impact on producers since producers would not be precluded from appealing the decision of an inspector after a grade has been assigned.

**List of Subjects in 7 CFR Part 29**

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 29 which was published at 64 FR 51887 on September 27, 1999, is adopted as a final rule with the following change:

## PART 29—TOBACCO INSPECTION

### Subpart B—Regulations

1. The authority citation for part 29, subpart B continues to read as follows:

**Authority:** 7 U.S.C. 511m and 511r.

2. In § 29.81, paragraph (a) is revised to read as follows:

**§ 29.81 Interference with inspectors.**

(a) No person, including the owner, producer, warehouseman, purchaser, agent, or employee thereof shall attempt, in any manner, to influence an inspector with respect to the grade designation of tobacco, or impede, in any manner, an inspector while the inspector is in the process of grading tobacco on the warehouse auction floor, or ask any question or discuss any matter pertaining to the grading of tobacco while the inspector is grading any tobacco on the warehouse auction floor. While inspectors are engaged in grading the day's sale, all requests for information concerning the grade designation on or requests to review the grade of any lot of tobacco shall be made only to the head grader or to the market supervisor grader.

* * * * *

Dated: April 5, 2000.

**Kathleen A. Merrigan,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 00–9173 Filed 4–12–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AWA–1]**

**RIN 2120–AA66**

## Revision of the Legal Description of the Houston Class B Airspace Area; TX

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

**ACTION:** Final rule.

**SUMMARY:** This action amends the legal description of the Houston, TX, Class B Airspace Area. Specifically, this rule revises the description of the southern portion of the Houston Class B Airspace Area by eliminating references to the Hobby Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as the point of origin. The new point of origin will be the current geographical location of the Hobby VOR/DME. The FAA is taking this action due to the planned relocation of the Hobby VOR/DME. This action does not change the actual dimensions, configuration, or operating requirements of the Houston Class B Airspace Area.

**EFFECTIVE DATE:** 0901 UTC, June 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bil Nelson, 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:**

**Background**

Due to construction on the William P. Hobby Airport property occurring in close proximity to the Hobby VOR/DME, the FAA will relocate the VORTAC approximately 2,000 feet to the east of its current location. This relocation of the Hobby VOR/DME will effect the current legal description of the Houston Class B airspace area. Specifically, the description of the southern portion of the Houston Class B Airspace area uses the Hobby VOR/DME as a reference. To assist general aviation in identifying the southern boundaries of the Houston Class B airspace area, the FAA will publish on the Houston Visual Flight Rules Terminal Area Chart geographical coordinates along with bearings/fix/distance information.

**The Rule**

This action amends the legal description of the Houston, TX, Class B Airspace Area. Specifically, this rule revises the description of the southern portion of the Houston Class B Airspace Area by eliminating references to the Hobby Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as the point of origin. As a result the FAA is establishing the point of origin for the southern portion of the Houston Class B airspace area, from the current geographical location of the Hobby VOR/DME. This action does not change the actual dimensions, configuration, or operating requirements of the Houston Class B Airspace Area.

Since this action merely involves a change in the legal description of the Houston Class B airspace area, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class B airspace areas are published in paragraph 3000 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 B airspace area listed in this document will be published subsequently in the Order.

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

## PART 71—[AMENDED]

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; 14 CFR 11.69.

**§ 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 3000 Subpart B—Class B Airspace*

* * * * *

**ASW TX B Houston, TX (Revised)**

George Bush Intercontinental Airport (IAH) (Primary Airport)
(Lat. 29°58′50″ N., long. 95°20′23″ W.)
William P. Hobby Airport (HOU) (Secondary Airport)
(Lat. 29°38′44″ N., long. 95°16′44″ W.)
Ellington Field
(Lat. 29°36′27″ N., long. 95°09′32″ W.)
Humble VORTAC (IAH)
(Lat. 29°57′25″ N., long. 95°20′45″ W.)
Point of Origin
(Lat 29°39′01″ N., long. 95°16′45″ W.)

**Boundaries**

**Area A.** That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile DME arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile DME arc to the Humble VORTAC 069° radial; thence east along the Humble VORTAC 069° radial to the 10-mile arc of the Humble VORTAC; thence clockwise along the 10-mile arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45′37″ N., long. 95°21′58″ W.; to lat. 29°45′46″ N., long. 95°11′47″ W.; thence clockwise along the 8-mile arc from the Point of Origin to intercept the 056° bearing from the Point of Origin; thence southwest along the 056° bearing to the 5.1-mile fix from the Point of Origin, thence direct to the Point of Origin 131° bearing/5.8-mile fix from the Point of Origin; thence southeast along the 131° bearing from the Point of Origin to intercept the 7-mile arc from the Point of Origin; thence clockwise on the 7-mile arc to the 156° bearing from the Point of Origin; thence north along the 156° bearing to the 6-mile fix from the Point of Origin; thence clockwise along the 6-mile arc to the 211° bearing from the Point of Origin; thence south along the 211° bearing from the Point of Origin to the 8-mile arc from the Point of Origin; thence clockwise to the point of beginning.

**Area B.** That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to the 211° bearing from the Point of Origin; thence northeast along the 211° bearing to the 10-mile arc from the Point of Origin; thence east along the 10-mile arc to the 156° bearing from the Point of Origin; thence southeast along the 156° bearing to the 15-mile arc from the Point of Origin; thence counterclockwise on the 15-mile arc to the intersection of the 15-mile arc and the Humble VORTAC 15-mile arc; thence counterclockwise along the Humble VORTAC 15-mile arc to the intersection of the 15-mile arc and Westheimer Road lat. 29°44′07″ N., long. 95°28′47″ W.; thence southwest to and along SH 59 to the point of beginning, excluding Area A.

**Area C.** That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and Interstate 10 (I–10), west on I–10 to the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and Westheimer Road; thence southwest to and along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 15-mile arc and the 156° bearing from the Point of Origin; thence north along the 156° bearing to the 10-mile arc from the Point of Origin clockwise along the 10-mile arc to the 211° bearing from the Point of Origin; thence south along the 211° bearing to intersect the 15-mile arc from the Point of Origin to the point of beginning.

**Area D.** That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile arc and the 20-mile arc from the Point of Origin; thence clockwise along the 20-mile arc to SH 59; thence southwest on SH 59 to the point of beginning, excluding Areas B, C, and E.

**Area E.** That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the 15-mile arc from the Point of Origin and SR 6; thence southeast along SR 6 to the intersection of SR 6 and FR 521; thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc from the Point of Origin to the point of the beginning.

* * * * *

Issued in Washington, DC, on April 6, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–9145 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ASO–5]**

## Amendment of Class E Airspace; McMinnville, TN

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at McMinnville, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Columbia River Park Hospital, McMinnville, TN. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action amends the Class E5 airspace for McMinnville, TN, to the east, in order to include the point in space approach serving Columbia River Park Hospital.

**EFFECTIVE DATE:** 0901 UTC, June 15, 2000.

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

**SUPPLEMENTARY INFORMATION:**

### History

On February 18, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at McMinnville, TN, (65 FR 8325). This action provides adequate Class E airspace for IFR operations at the Columbia River Park Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface 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 part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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

### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) amends Class E airspace at McMinnville, TN for the Columbia River Park Hospital.

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

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

Airspace, Incorporation by Reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO TN E5 McMinnville, TN [Revised]**

McMinnville, Warren County Memorial Airport, TN
(Lat. 35°41′55″ N, long. 85°50′38″ W)
Warri NDB
(Lat. 35°45′09″ N, long. 85°45′51″ W)
Columbia River Park Hospital, McMinnville, TN
Point In Space Coordinates
(Lat. 35°42′06″ N, long. 85°43′45″ W)

That airspace extending upward from 700 feet or more above the surface within a 11-mile radius of Warrant County Memorial airport and within 2.5 miles each side of the 051° bearing from the Warri NDB, extending from the 11-miles radiu to 7 miles northeast of the NDB, and that airspace within a 6-mile radius of the point in space (Lat. 35°42′06″ N, long. 85°43′45″ W) serving Columbia River Park Hospital, McMinnville, TN,

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Issued in College Park, Georgia, on March 31, 2000.

**Nancy B. Shelton,**

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

[FR Doc. 00–9217 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ASO–6]**

## Amendment of Class E Airspace; Dayton, TN

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Dayton, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Bledsoe County Hospital, Pikeville, TN. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action amends the Class E5 airspace for Dayton, TN, to the northwest, in order to include the point in space approach serving Bledsoe County Hospital.

**EFFECTIVE DATE:** 0901 UTC, June 15, 2000.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On February 18, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Dayton, TN, (65 FR 8326). This action provides adequate Class E airspace for IFR operations at the Bledsoe County Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface 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 part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Dayton, TN, for the Bledsoe County Hospital.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (14 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Airspace, Incorporation by Reference, Navigation (air).

**Addoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points,

dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO TN E5 Dayton, TN [Revised]**

Dayton, Mark Anton Airport, TN
(Lat. 35°29′10″ N, long. 84°55′52″ W)
Hardwick Field Airport
(Lat. 35°13′12″ N, long 84°49′57″ W)
(Bledsoe County Hospital, Pikeville, TN
Point in Space Coordinates
(Lat. 35°37′34″ N, long. 85°10′38″ W)

That airspace extending upward from 700 feet or more above the surface within a 12.5-mile radius of Mark Anton Airport, and within a 6.5-mile radius of Hardwick Field Airport, and that airspace within a 6-mile radius of the point in space (lat. 35°37′34″ N, long. 85°10′38″ W) serving Bledsoe County Hospital, Pikeville, TN; excluding that airspace within the Athens, TN, Class E airspace area.

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Issued in College Park, Georgia, on March 31, 2000.

**Nancy B. Shelton,**

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

[FR Doc. 00–9218 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–13–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 219

**RIN 3220–AB43**

### Evidence Required for Payment

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (RRB) hereby amends its regulations to permit the use of noncertified copies and facsimile copies of records or documents needed to establish eligibility for benefits under the Railroad Retirement Act. These amendments will make it easier for individuals to apply for benefits under the Act.

**DATES:** Effective May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Senior Attorney, (312) 751–4945, TTD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** In order to receive benefits under the Railroad Retirement Act an individual may be required to provide proof of age, marriage, divorce, or death. Section 219.6 of the Board's regulations generally required that where a claimant must provide a record or document to establish an eligibility requirement, the original or a certified copy of such document or record must be provided. This requirement proved burdensome for claimants. Many claimants wish to transmit their documentary evidence electronically by use of telefax devices. Consequently, the Board amends its regulations to permit the use of uncertified copies and facsimiles of certain official records when the official custodian of such records transmits the facsimile directly to an office of the Board and the source of the transmittal is clearly identified on the facsimile. In addition, the Board amends it regulations to permit Board employees to certify translations of foreign documents.

On November 26, 1999, the Board published this rule as a proposed rule (64 FR 66433), inviting comments on or before January 25, 2000. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

**List of Subjects in 20 CFR Part 219**

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board amends chapter II of title 20 of the Code of Federal Regulations as follows:

## PART 219—EVIDENCE REQUIRED FOR PAYMENT

1. The authority citation for part 219 continues to read as follows:

**Authority:** 45 U.S.C. 231f.

2. In § 219.6 the section heading and paragraphs (a) and (b) are revised, and a new paragraph (d) is added to read as follows:

**§ 219.6 Records as evidence.**

(a) *General.* If a claimant or an annuitant provides an original document or record as evidence to prove eligibility or continued entitlement to payments, where possible, a Board employee will make a photocopy or transcript of these original documents or records and return the original documents to the person who furnished them. A claimant may also submit certified copies of original records as described in paragraph (c) of this section. The Board may also accept uncertified copies as described in paragraph (d) of this section.

(b) *Foreign-language documents.* If the evidence submitted is a foreign-language document, the Board may require that the record be translated. An acceptable translation includes, but is not limited to, a translation certified by a United States consular official or employee of the Department of State authorized to certify evidence, or by an employee of the Board or the Social Security Administration.

* * * * *

(d) *Uncertified copies and facsimiles.* In lieu of certified paper copies of records or extracts from such official sources as listed in paragraph (c) of this section, the Board will accept facsimile copies of such records or extracts when the official custodian of such records transmits the facsimile directly to an office of the Board and the source of the transmittal is clearly identified on the facsimile.

Dated: March 24, 2000.

By Authority of the Board.

For the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–9024 Filed 4–12–00; 8:45 am]

BILLING CODE 7905–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 5

### Delegations of Authority and Organization

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority and organization by updating the addresses for headquarters and the field offices. This action is necessary to ensure the accuracy of the regulations.

**DATES:** This rule is effective April 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rodolfo Guillen, Jr., Division of Management Programs (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4815.

**SUPPLEMENTARY INFORMATION:** The regulations are being amended in subpart C of part 5 (21 CFR part 5) to reflect the central organization of the agency and to provide current addresses for headquarters and field offices.

Notice and comment about the amendments are not necessary under the Administrative Procedure Act because this is a rule of agency organization (5 U.S.C. 553(b)).

**List of Subjects in 21 CFR Part 5**

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

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

**Authority:** 15 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.200 is revised to read as follows:

### § 5.200 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

**Office of the Commissioner.**[1]
Office of the Chief Counsel.
Office of Equal Opportunity.
Office of the Administrative Law Judge.
Office of the Senior Associate Commissioner.
Office of Executive Secretariat.
Office of Public Affairs.
Office of the Ombudsman.
Office of Orphan Products Development.
Office of Internal Affairs.
Office of Executive Operations.
*Office of International and Constituent Relations.*
Office of International Programs.
Office of Consumer Affairs.
Office of Women's Health.
Office of Special Health Issues.
*Office of Policy, Planning, and Legislation.*
Office of Policy.
Office of Planning.
Office of Legislation.
*Office of Management and Systems.*
Office of Human Resources and Management Services.
Office of Information Resources Management.
Office of Financial Management.
Office of Facilities, Acquisitions, and Central Services.[2]

**Center for Biologics Evaluation and Research.**[3]
*Office of the Center Director.*
Scientific Advisors and Consultants Staff.
Equal Employment Opportunity and Workforce Diversity Staff.
Quality Assurance Staff.
Regulations and Policy Staff.
Veterinary Services Staff.
*Office of Management.*
Regulatory Information Management Staff.
Division of Planning, Evaluation, and Budget.
Division of Management Services.
Office of Information Technology Management.
Division of Information Technology Operations.
Division of Information Technology Development.
Division of Information Technology Infrastructure.
*Office of Compliance and Biologics Quality.*
Team Biologics Liaison Staff.
Advertising and Promotional Labeling Staff.
Division of Case Management.
Division of Manufacturing and Product Quality.
Division of Inspections and Surveillance.
*Office of Blood Research and Review.*
Human Tissue Staff.
Policy and Publications Staff.
Division of Emerging and Transfusion Transmitted Diseases.
Division of Hematology.
Division of Blood Applications.
*Office of Therapeutics Research and Review.*
Division of Cellular and Gene Therapies.
Division of Therapeutic Proteins.
Division of Monoclonal Antibodies.
Division of Clinical Trial Design and Analysis.
Division of Application Review and Policy.
*Office of Vaccines Research and Review.*
Division of Bacterial, Parasitic, and Allergenic Products.
Division of Viral Products.
Division of Vaccines and Related Products Applications.
*Office of Communication, Training, and Manufacturers Assistance.*
Division of Disclosure and Oversight Management.
Division of Manufacturers Assistance and Training.
Division of Communication and Consumer Affairs.
Office of Biostatistics and Epidemiology.
Division of Biostatistics.
Division of Epidemiology.

**Center for Food Safety and Applied Nutrition.**[4]
*Office of the Center Director.*
Food Safety Initiatives Staff.
Senior Science Advisor's Staff.
*Office of Regulations and Policy.*
Regulations Coordination Staff.
Office of Constituent Operations.
Consumer Education Staff.
International Activities Staff.
Industry Activities Staff.
*Office of Management Systems.*
Safety Management Staff.
Division of Information Resources Management.
Division of Planning and Financial Resources Management.
Division of Management Operations.
Division of Administrative Services Management.
*Office of Operations.*
Equal Employment Opportunity Staff.
Executive Operations Staff.
*Office of Cosmetics and Colors.*
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.
*Office of Nutritional Products, Labeling, and Dietary Supplements.*
Clinical Research and Review Staff.
Division of Compliance and Enforcement.
Division of Standards and Labeling Regulations.
Division of Nutrition Science Policy.
Division of Research and Applied Technology.
*Office of Premarket Approval.*
Division of Product Policy.
Division of Petition Control.
Division of Health Effects Evaluation.
Division of Molecular Biological Research and Evaluation.
Division of Product Manufacture and Use.
*Office of Plant and Dairy Foods and Beverages.*
Division of Virulence Assessment.
Division of Pesticides and Industrial Chemicals.
Division of Natural Products.
Division of Food Processing and Packaging.
Division of Plant Product Safety.
Division of Dairy and Egg Safety.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] Mailing address: 5630 Fishers Lane, Rockville, MD 20852.

[3] Mailing address: 1401 Rockville Pike, Rockville, MD 20852–1448.

[4] Mailing address: 200 C St. SW., Washington DC 20204.

Division of Risk Assessment.
*Office of Seafood.*
Division of Special Programs.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.
*Office of Special Research Skills.*
Division of Toxicology Research.
Division of Microbiological Studies.
*Office of Field Programs.*
Division of Enforcement and Programs.
Division of HACCP Programs.
Division of Cooperative Programs.
*Office of Scientific Analysis and Support.*
Division of General Scientific Support.
Division of Mathematics.
Division of Market Studies.

**Center for Drug Evaluation and Research**.[1]

*Office of the Center Director.*
Equal Employment Opportunity Staff.
Executive Operations Staff.
Regulatory Policy Staff.
*Office of Management.*[1]
Strategic Planning Staff.[5]
Division of Management and Budget.[5]
Division of Management Services.[5]
*Office of Training and Communication.*[1]
Division of Communications Management.
Division of the Medical Library.
Division of Training and Development.
Division of Freedom of Information.
*Office of Compliance.*[6]
Division of Manufacturing and Product Quality.
Division of Prescription Drug Compliance and Surveillance.
Division of Labeling and Non-Prescription Drug Compliance.
*Office of Information Technology.*[1]
Quality Assurance Staff.
Technology Support Services Staff.
Division of Data Management and Services.
Division of Applications Development and Services.
Division of Infrastructure Management and Services.
*Office of Medical Policy.*[1]
Division of Drug Marketing, Advertising, and Communication[1]
Division of Scientific Investigations.[6]
*Office of Review Management.*[1]
Advisors and Consultants Staff.[2]
*Office of Drug Evaluation I.*[1]
Division of Cardio-Renal Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology Drug Products.
*Office of Drug Evaluation II.*[1]
Division of Metabolic and Endocrine Drug Products.
Division of Pulmonary and Allergy Drug Products.
Division of Anesthetic, Critical Care, and Addiction Drug Products.
*Office of Drug Evaluation III.*[1]
Division of Gastrointestinal and Coagulation Drug Products.
Division of Medical Imaging and Radiopharmaceutical Drug Products.
Division of Reproductive and Urologic Drug Products.
*Office of Drug Evaluation IV.*
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.
Division of Special Pathogen and Immunologic Drug Products. *Office of Drug Evaluation V.*
Division of Anti-Inflammatory, Analgesic, and Opthalmologic Drug Products.
Division of Dermatologic and Dental Drug Products.
Division of Over-the-Counter Drug Products.
*Office of Biostatistics.*[1]
Quantitative Methods Research Staff.
Division of Biometrics I.
Division of Biometrics II.
Division of Biometrics III.
*Office of Post-Marketing Drug Risk Assessment.*
Extramural Programs Staff.
Information Technology Staff.
Division of Drug Risk Evaluation I.
Division of Drug Risk Evaluation II.
*Office of Pharmaceutical Science.*[1]
Quality Implementation Staff.[1]
Operations Staff.[1]
*Office of Clinical Pharmacology and Biopharmaceutics.*
Pharmacometrics Staff.
Division of Pharmaceutical Evaluation I.[1]
Division of Pharmaceutical Evaluation II.[1]
Division of Pharmaceutical Evaluation III.[1]
*Office of Generic Drugs.*[5]
Division of Bioequivalence.
Division of Chemistry I.
Division of Chemistry II.
Division of Labeling and Program Support.
*Office of New Drug Chemistry.*[1]
Division of New Drug Chemistry I.[1]
Division of New Drug Chemistry II.[1]
Division of New Drug Chemistry III.[1]
*Office of Testing and Research.*[1]
Regulatory Research and Analysis Staff.
Laboratory of Clinical Pharmacology.[7]
Division of Applied Pharmacology Research.[8]
Division of Testing and Applied Analytical Development.[9]
Division of Product Quality Research.[1]
*Office of Regulatory Affairs.*[1]
Contaminants Policy Coordination Staff.
Equal Employment Opportunity Staff.
Strategic Initiatives Staff.
*Office of Resource Management.*
Division of Planning, Evaluation, and Management.
Division of Information Systems.
Division of Human Resource Development.
Division of Management Operations.
Division of Personnel Operations.
*Office of Enforcement.*
Medical Products Quality Assurance Staff.
Division of Compliance Management and Operations.
Division of Compliance Policy.
*Office of Regional Operations.*
Division of Federal-State Relations.
Division of Field Science.
Division of Emergency and Investigational Operations.
Division of Import Operations and Policy.
*Office of Criminal Investigations.*
Mid-Atlantic Area Office.[10]
Midwest Area Office.[11]
Northeast Area Office.[12]
Pacific Area Office.[13]
Southeast Area Office.[14]
Southwest Area Office.[15]

**Center for Veterinary Medicine**.[16]

*Office of the Center Director.*
*Office of Management and Communications.*
Administrative Staff.
Communications Staff.
Program Planning and Evaluation Staff.
Information Resources Management Staff.
*Office of New Animal Drug Evaluation.*
Division of Therapeutic Drugs for Food Animals.

[5] Mailing address: 7500 Standish Pl., Rockville, MD 20855.

[6] Mailing address 7520 Standish Pl., Rockville, MD 20855.

[7] Mailing address: Four Research Ct., Rockville, MD 20850.

[8] Mailing address: 8308 Muirkirk Rd., Laurel, MD 20708.

[9] Mailing address: 1114 Market St., St. Louis, MO 63101.

[10] Mailing address: 900 U.S. Courthouse, Second Chestnut St., Philadelphia, PA 19106.

[11] Mailing address: 901 Warrenville Rd., suite 360, Lisle, IL 60532.

[12] Mailing address: 850 Third Ave., Brooklyn, NY 11232.

[13] Mailing address: 13301 Clay St., Oakland, CA 94512.

[14] Mailing address: 60 Eighth St. NE., Atlanta, GA 30309.

[15] Mailing address: 7920 Elmbrook Rd., Dallas, TX, 75247.

[16] Mailing address: 7500 Standish Pl., MPN–2, Rockville, MD 20855.

Division of Biometrics and Production Drugs.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Human Food Safety.
Division of Manufacturing Technologies.
*Office of Surveillance and Compliance.*
Division of Surveillance.
Division of Animal Feeds.
Division of Compliance.
Division of Epidemiology.
*Office of Research.*
Administrative Staff.
Division of Residue Chemistry.
Division of Animal Research.
Division of Animal and Food Microbiology.
**Center for Devices and Radiological Health.**[17]
*Office of the Center Director.*
Equal Employment Opportunity Staff.
*Office of Systems and Management.*
Integrity Committee and Conference Management Staff.
Division of Management Operations.
Division of Information Dissemination.
Division of Information Technology Management.
Division of Planning, Analysis, and Finance.
*Office of Compliance.*
Promotion and Advertising Policy Staff.
Division of Bioresearch Monitoring.
Division of Program Operations.
Division of Enforcement I.
Division of Enforcement II.
Division of Enforcement III.
*Office of Device Evaluation.*
Program Management Staff.
Program Operations Staff.
Division of Cardiovascular, Respiratory, and Neurological Devices.
Division of Reproductive, Abdominal, Ear, Nose, Throat, and Radiological Devices.
Division of General and Restorative Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.
Division of Dental, Infection Control, and General Hospital Devices.
*Office of Science and Technology.*
Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Electronics and Computer Sciences.
Division of Management Information and Support Services.
*Office of Health and Industry Programs.*
Program Operations Staff.
Regulations Staff.
Staff College.
Division of Device User Programs and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
Division of Communication Media.
*Office of Surveillance and Biometrics.*
Issues Management Staff.
Division of Biostatistics.
Division of Postmarket Surveillance.
Division of Surveillance Systems.
**National Center for Toxicological Research.**[18]
*Office of the Center Director.*
Environmental Health and Program Assurance Staff.
*Office of Research.*
Technology Advancement Staff.
Division of Biochemical Toxicology.
Division of Genetic and Reproductive Toxicology.
Division of Biometry and Risk Assessment.
Division of Microbiology.
Division of Chemistry.
Division of Neurotoxicology.
Division of Veterinary Services.
Division of Molecular Epidemiology.
*Office of Management.*
*Office of Management Services.*
Contracts and Procurement Staff.
Division of Facilities, Engineering, and Maintenance.
Division of Administrative Services.
*Office of Planning, Finance and Information Technology.*
Division of Planning.
Division of Financial Management.
Division of Information Technology.

3. Section 5.210 is revised to read as follows:

**§ 5.210 FDA Public Information Offices.**

(a) *Dockets Management Branch (HFA–305).* The Dockets Management Branch Public Room is located in rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. Telephone: 301–827–6860.

(b) *Freedom of Information Staff (HFI–35).* The Freedom of Information Public Room is located in rm. 12A–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–827–6567.

(c) *Press Relations Staff (HFI–40).* The Press Offices are located in rm. 15–05, Parklawn Bldg., 5600 Fisher Lane, Rockville, MD 20857. Telephone: 301–827–6242; and in rm. 3807, FB–8, 200 C St. SW., Washington, DC 20204. Telephone 202–205–4144.

4. Section 5.215 is revised to read as follows:

**§ 5.215 Field structure.**

**NORTHEAST REGION**

*Regional Field Office:* 850 Third Ave., Brooklyn, NY 11232.
*Northeast Regional Laboratory:* 850 Third Ave., Brooklyn, NY 11232–1593.
*New York District Office:* 850 Third Ave., Brooklyn, NY 11232–1593.
*New England District Office:* One Montvale Ave., Stoneham, MA 02180.
*Winchester Engineering and Analytical Center:* 109 Holton St., Winchester, MA 01890.

**CENTRAL REGION**

*Regional Field Office:* U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.
*Philadelphia District Office:* U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.
*Baltimore District Office:* 900 Madison Ave., Baltimore, MD 21201–2199.
*Cincinnati District Office:* 6751 Steger Dr., Cincinnati, OH 45237–3097.
*Forensic Chemistry Center:* 1141 Central Pkwy., Cincinnati, OH 45202–1097.
*New Jersey District Office:* Waterview Corporate Center, 10 Waterview Blvd., 3d Floor, Parsippany, NJ 07054.
*Chicago District Office:* 300 South Riverside Plaza, suite 550, South Chicago, IL 60606.
*Detroit District Office:* 1560 East Jefferson Ave., Detroit, MI 48207–3179.
*Minneapolis District Office:* 240 Hennepin Ave., Minneapolis, MN 55401–1912.

**SOUTHEAST REGION**

*Regional Field Office:* 60 Eighth St. NE., Atlanta, GA 30309.
*Southeast Regional Laboratory:* 60 Eighth St. NE., Atlanta, GA 30309.
*Atlanta District Office:* 60 Eighth St. NE., Atlanta, GA 30309.
*Nashville District Office:* 297 Plus Park Blvd., Nashville, TN 37217.
*New Orleans District Office:* 4298 Elysian Fields Ave., New Orleans, LA 70122.
*Florida District Office:* 555 Winderley, suite 200, Maitland, FL 32751.
*San Juan District Office:* 466 Fernandez Juncos Ave., San Juan, PR 00901–3223.

**SOUTHWEST REGION**

*Regional Field Office:* 7920 Elmwood Rd., suite 102, Dallas, TX 75247–4982.
*Dallas District Office:* 3310 Live Oak St., Dallas, TX 75204.
*Denver District Office:* Bldg. 20, Denver Federal Center, Sixth and Kipling Sts., P.O. Box 25087, Denver, CO 80225–0087.
*Kansas City District Office:* 11630 West 80th St., Lenexa, KS 66214–3338.

[17] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.

[18] Mailing address: 3900 NCTR Dr., Jefferson, AR 72079.

*St. Louis Branch:*12 Sunnen Dr., suite 122, St. Louis, MO 63143–3800.

*Arkansas Regional Laboratory:* 3900 NCTR Rd., Bldg. 14–T, rm. 104, Jefferson, AR 72079–9502.

**PACIFIC REGION**

*Regional Field Office:* 1301 Clay St., suite 1180–N, Oakland, CA 94612–5217.

*San Francisco District Office:* 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070.

*Los Angeles District Office:* 19900 MacArthur Blvd., suite 300, Irvine, CA 92715.

*Seattle District Office:* P.O. Box 3012, Bothell, WA 98021–3012.

*Pacific Regional Laboratory, SW.:* 1521 West Pico Blvd., Los Angeles, CA 90015–2488.

*Pacific Regional Laboratory, NW.:* 22201 23d Dr. SE., Bothell, WA 98021–4421.

Dated: April 5, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9126 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 868, 884, and 890

**[Docket No. 98N–0564]**

## Medical Devices; Effective Date of Requirement for Premarket Approval for Three Preamendment Class III Devices

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule to retain three class III preamendment devices in class III and to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the following devices: The lung water monitor, the powered vaginal muscle stimulator, and the stair-climbing wheelchair. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices.

**DATES:** This rule is effective April 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of August 18, 1998 (63 FR 44177), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)), of a PMA or a notice of completion of a PDP for three preamendment class III devices. In accordance with section 515(b)(A)(2) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the premarket approval requirements of the act, and the benefits to the public from use of the devices. The proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings. Under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. If anyone wanted to submit a petition requesting a change in the classification of the three devices, they were required to submit it by September 2, 1998. The comment period closed November 16, 1998.

FDA received no comments on the proposed rule. FDA received one citizen petition requesting a change in the classification of the stair-climbing wheelchair from class III to class II. FDA reviewed the petition and determined that there was not sufficient information to establish special controls to reasonably assure the safety and effectiveness of the device. FDA informed the petitioner in a letter dated May 10, 1999, that if additional information was submitted under section 513(e) of the act (21 U.S.C. 360c(e)) within 30 days to support the reclassification of the device, FDA would review the information. FDA also stated that if the petitioner did not submit additional information within 30 days to show that sufficient information is available to establish special controls to reasonably assure the safety and effectiveness of the device, FDA would deem the reclassification petition withdrawn. FDA has not received any new information from the petitioner and has deemed the reclassification petition withdrawn.

### II. Findings With Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings it published in the proposed rule. As required by section 515(b) of the act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committees (the panels) for these devices, the Anesthesiology and Respiratory Devices Panel, the Obstetrical and Gynecological Devices Panel, and the Orthopedic and Rehabilitation Devices Panel for the classification of the devices along with any additional information that FDA discovered. Additional information can be found in the proposed and final rules classifying these devices published in the **Federal Register** of November 2, 1979 (44 FR 63292), and July 16, 1982 (47 FR 31130), for the lung water monitor; April 3, 1979 (44 FR 19894), and February 26, 1980 (45 FR 12682), for the powered vaginal muscle stimulator; and August 28, 1979 (44 FR 50458), and November 23, 1983 (48 FR 53032), for the stair-climbing wheelchair.

### III. The Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and issuing this final rule to require premarket approval of these generic types of devices for class III preamendment devices by revising parts 868, 884, and 890 (21 CFR parts 868, 884, and 890).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 12, 2000, for any of these class III preamendment devices that were in commercial distribution before May 28, 1976, or that have been found by FDA to be substantially equivalent to such a device on or before July 12, 2000. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendment device subject to this rule that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of these class III preamendment devices is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR part 812) are met.

**IV. Environmental Impact**

The agency has determined under 21 CFR 25.30(h) 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.

**V. Analysis of Impacts**

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

On August 14, 1996 (60 FR 41984), FDA issued an order under section 515(i) of the act requiring manufacturers of these three devices (among others) to submit information concerning the safety and effectiveness of the devices. Manufacturers were required to comply with this order, if they wished to market the device. FDA received no submissions in response to this order for these three devices. Although one manufacturer submitted a reclassification petition for the stair-climbing wheelchair in response to the proposed rule, the manufacturer did not respond to requests for additional information. FDA believes that the manufacturer is no longer interested in marketing this device because there is limited demand for it. Therefore, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

**VI. Paperwork Reduction Act of 1995**

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**List of Subjects in 21 CFR Parts 868, 884, and 890**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 868, 884, and 890 are amended as follows:

## PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2450 is amended by revising paragraph (c) to read as follows:

**§ 868.2450 Lung water monitor.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 12, 2000, for any lung water monitor that was in commercial distribution before May 28, 1976, or that has, on or before July 12, 2000, been found to be substantially equivalent to a lung water monitor that was in commercial distribution before May 28, 1976. Any other lung water monitor device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

## PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

3. The authority citation for 21 CFR part 884 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

4. Section 884.5940 is amended by revising paragraph (c) to read as follows:

**§ 884.5940 Powered vaginal muscle stimulator for therapeutic use.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 12, 2000, for any powered vaginal muscle stimulator for therapeutic use that was in commercial distribution before May 28, 1976, or that has, on or before July 12, 2000, been found to be substantially equivalent to a powered vaginal muscle stimulator that was in commercial distribution before May 28, 1976. Any other powered vaginal muscle stimulator for therapeutic use shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

## PART 890—PHYSICAL MEDICINE DEVICES

5. The authority citation for 21 CFR part 890 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 890.3890 is amended by revising paragraph (c) to read as follows:

**§ 890.3890 Stair-climbing wheelchair.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 12, 2000, for any stair-climbing wheelchair that was in commercial distribution before May 28, 1976, or that has, on or before July 12, 2000, been found to be substantially equivalent to a stair-climbing wheelchair that was in commercial distribution before May 28, 1976. Any other stair-climbing wheelchair shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: April 3, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–9135 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 878**

**[Docket No. 86P–0087]**

## Medical Devices; Reclassification and Codification of the Stainless Steel Suture

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to Alto Development Corp. (the petitioner) reclassifying the 316L stainless steel suture for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure from class III (premarket approval) to class II (special controls). The order is being codified in the Code of Federal Regulations (CFR). Although FDA reclassified the device in 1986, it inadvertently neglected to publish a notice of the reclassification in the **Federal Register** or codify the change in the CFR.

**DATES:** This rule is effective May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. The SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

The 1976 amendments broadened the definition of ''device'' in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices, i.e., those devices previously regulated as new drugs, including stainless steel sutures, into class III.

On December 16, 1977, FDA published a notice in the **Federal Register** (42 FR 63472), that identified sutures as class III devices under the transitional provisions of the act for which premarket approval is required. Section 520(l)(2) of the act (21 U.S.C. 360j(l)(2)) provides that, in addition to the Secretary of Health and Human Services, the manufacturer or importer of a device classified into class III under the transitional provisions, may file a petition for reclassification of the device into class I or class II. The procedures for filing and review of petitions for reclassification of transitional devices are set forth in § 860.136 (21 CFR 860.136).

On February 21, 1986, FDA filed the petition submitted by the petitioner, requesting reclassification of the 316L stainless steel sutures from class III to class II. FDA consulted with the General and Plastic Surgery Devices Panel (the Panel) regarding reclassification of the devices. During an open panel meeting on March 25, 1986, the Panel recommended that FDA reclassify the 316L stainless steel sutures intended for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure, from class III to class II. In addition, the Panel recommended that FDA assign a low priority for the development of a performance standard based on the long history of safe use of the device and the conformance by stainless steel manufacturers to existing voluntary standards.

After reviewing the data in the petition and presented before the Panel, FDA agreed with the Panels recommendation that the 316L stainless steel sutures, and substantially equivalent devices of this generic type, intended for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure should be reclassified from class III to class II, and that the issuance of a performance standard for the device would be a low priority.

On July 30, 1986, FDA issued an order to the petitioner reclassifying the 316L stainless steel suture, and substantially equivalent devices for this generic type, from class III into class II. Inadvertently, FDA neglected to announce the reclassification order in the **Federal Register**.

Accordingly, as required by § 860.136(b)(6), FDA is announcing the reclassification of the generic 316L stainless steel suture from class III to class II. In addition, FDA is issuing this final rule to codify the reclassification of the device by adding new § 878.4495.

### II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) 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.

### III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II has relieved all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because reclassification has reduced regulatory costs with respect to this device, no significant economic impact has been imposed on any small entities, and it may have permitted small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule does not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

**List of Subjects in 21 CFR Part 878**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

## PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.4495 is added to subpart E to read as follows:

### § 878.4495 Stainless steel suture.

(a) *Identification.* A stainless steel suture is a needled or unneedled nonabsorbable surgical suture composed of 316L stainless steel, in USP sizes 12–0 through 10, or a substantially equivalent stainless steel suture, intended for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure.

(b) *Classification.* Class II (special controls).

Dated: March 29, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–9129 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD07–00–022]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Wappoo Creek (ICW), Charleston, SC

**AGENCY:** Coast Guard, DOT.

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

**SUMMARY:** Notice is hereby given that the Commander, Seventh Coast Guard District has approved a temporary deviation from the regulations governing the operation of the Folly Road (SC Route 171) drawbridge across the Atlantic Intracoastal Waterway, mile 470.8, Charleston, Charleston County, South Carolina. This deviation allows the drawbridge owner or operator to open only a single leaf of the drawbridge, and requires one hour advance notification to accommodate a request for a full double-leaf opening. This temporary schedule allows the bridge owner to safely conduct necessary repairs to the drawbridge.

**DATES:** This deviation is effective from March 28, 2000 to May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Rich, Project Manager, Seventh Coast Guard District, Bridge Section at (305) 536–5117.

**SUPPLEMENTARY INFORMATION:** The Folly Road drawbridge across the Atlantic Intracoastal Waterway at Charleston, has a vertical clearance of 33 feet above mean high water (MHW) and 38 feet above mean low water (MLW) measured at the fenders in the closed position. On February 27, 2000, Coastal Marine Construction, Incorporated, the contractor representing the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner. The contractor has advised us that the drawbridge is likely to suffer failure of operation, which would increase the intensity and length of time in order to complete the necessary repairs.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of conducting repairs to the drawbridge. Under this deviation, the Folly Road (SC Route 171) Drawbridge need only open one leaf of the drawbridge unless one hour advance notification is provided by the vessel operator to the drawbridge tender which would allow a full double-leaf opening. The deviation is effective for a period of 50 days beginning on March 28, 2000 and ending on May 16, 2000.

Dated: March 21, 2000.

**T.W. Allen,**

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

[FR Doc. 00–9220 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[FRL–6566–9]**

## Finding of Failure To Submit a Required State Implementation Plan for Carbon Monoxide; Spokane, WA

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

**ACTION:** Finding of failure to submit.

**SUMMARY:** EPA is taking final action in making a finding, under the Clean Air Act (CAA or Act), that Washington failed to make a carbon monoxide (CO) nonattainment area State Implementation Plan (SIP) submittal required for Spokane under the Act. Under certain provisions of the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the CO National Ambient Air Quality Standards (NAAQS) in areas classified as serious. The deadline for submittal of this plan for Spokane was October 13, 1999. This action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a Federal Implementation Plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

**EFFECTIVE DATE:** This action is effective as of April 13, 2000.

**ADDRESSES:** Written comments should be addressed to: Ms. Debra Suzuki, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Christi Lee, Office of Air Quality (OAQ), U.S.EPA, Region 10, Washington Operations Office, 300 Desmond Drive SE, Suite 102, Lacey, Washington, 98503, Telephone (360) 753–9079.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The CAA Amendments of 1990 were enacted on November 15, 1990. Under Section 107(d)(1)(c) of the amended CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Spokane area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186 (a) of the Act, each CO area designated nonattainment under section 107 (d) was also classified by operations of law as either ''moderate'' or ''serious'' depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Spokane area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56846 (November 6, 1991).

(1) The CO nonattainment area is the ''Spokane urban area (as defined by the Washington Department of Transportation urban area maps).'' 40 CFR 81.348.

States containing areas that were classified as moderate nonattainment by operation of law under section 107 (d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31,1995. An attainment plan meeting most of the requirements of the Act was submitted by Ecology to EPA as a revision to the State Implementation Plan (SIP) on January 22, 1993. Ecology submitted an additional SIP revision to EPA on April 30, 1996. EPA approved a portion of the attainment plan submitted (the 1990 base year emission inventory, the vehicle miles traveled (VMT) tracking and forecasting provision, the VMT and Oxygenated fuel contingency measures and the deletion of two unimplemented transportation control measures). EPA deferred action on that part of the SIP revision which consisted of the Spokane CO attainment demonstration and the emissions budget provision. See 62 FR 49442 (September 22, 1997).

(2) The moderate area SIP requirements are set forth in section 187 (a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Spokane area has a design value above 12.7 ppm. 40 CFR 81.348.

Effective April 13, 1998, (63 FR 12007, March 12, 1998) the Spokane area was reclassified as a serious nonattainment area for not meeting the moderate area attainment date of December 31, 1995. EPA found that the standard was exceeded four times at one monitoring site in 1995. In 1996 the CO standard was exceeded once, at two different monitoring sites. Both 1997 and 1998 had no exceedance.

The State had 18 months or until October 13, 1999, to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for serious areas. Notwithstanding significant efforts by the Washington State Department of Ecology, the Spokane County Air Pollution Control Authority and the Spokane Regional Transportation Authority to complete their CO SIP, the state has failed to meet the October 13, 1999 deadline for the required SIP submission. EPA is therefore compelled to find that the State of Washington has failed to make the required SIP submission for Spokane. The CAA established specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provisions. Sections 179 (a) sets forth four findings that form the basis for applications of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Washington has not made the required complete submittal by October 13, 2001, pursuant to CAA section 179 (a) and 40 CFR 52.31, the offset sanction identified in CAA section 179 (b) will be applied in the affected area. If the State has still not made a complete submission by April 13, 2002, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31. In addition, CAA section 110 (c) provides that EPA must promulgate a Federal Implementation Plan (FIP).

(3) In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179 (b) (2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179 (b) (1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

The sanctions will not take effect if, before October 13, 2001, EPA finds that the State has made a complete submittal of a plan addressing the serious area CO requirements for Spokane. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal before April 13, 2002, (section 110 (c) (1) of the Act). EPA encourages the responsible parties in Washington State to continue working together on the CO Plan which can eliminate the need for potential sanctions and FIP.

## II. Final Action

### *A. Finding of Failure To Submit*

Today, EPA is making a finding of failure to submit for the Spokane CO nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area CO requirements of the CAA.

### *B. Effective Date Under the Administrative Procedures Act*

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process'rulemaking or informal adjudication'is appropriate for future actions of this kind. Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies. Today's action will be effective on April 13, 2000. Under the APA, 5 U.S.C. 553 (d) (3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State is aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a ''clock'' that will not result in sanctions for 18 months, and that the State may ''turn off'' through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

### *C. Notice-and-Comment Under the Administrative Procedures Act*

This document is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C.

553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

### III. Administrative Requirements

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this notice, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 13, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 13, 2000.

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 June 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: March 20, 2000.

**Jane Moore,**

*Acting Regional Administrator, Region X.*

[FR Doc. 00–7627 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[IL190–1a; FRL–6574–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Illinois; Approval of a Site-Specific Sulfur Dioxide Plan Revision for CILCO Edwards Station

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

**ACTION:** Direct final rule.

**SUMMARY:** On May 21, 1999, Illinois submitted a site-specific sulfur dioxide ($SO_2$) State Implementation Plan (SIP) revision request for the Central Illinois Light Company's Edwards Generating Station in Peoria County, Illinois. The requested revision provides for a temporary relaxation in the fuel quality limit for one of the facility's three boilers, but adds an overall daily sulfur dioxide emission cap for the three boilers. The State's submittal included dispersion modeling results which indicated that the revision will not cause violations of the $SO_2$ standards. EPA is approving this request.

**DATES:** This rule is effective on June 12, 2000, unless EPA receives relevant adverse written comments by May 15, 2000. If EPA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.

Copies of the State submittal and other relevant documents used in support of this action are available at the following address for inspection during normal business hours: U.S. Environmental Protection Agency, Region 5, Air Programs Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604.

**FOR FURTHER INFORMATION CONTACT:** Mary Portanova, USEPA Region 5, (312) 353–5954.

**SUPPLEMENTARY INFORMATION:** The supplemental information is organized in the following order:

I. What action is being taken in this document?
II. What is the SIP?
III. Does approval of a variance create a permanent SIP revision?
IV. What has changed in the Illinois $SO_2$ SIP?
V. Why was this SIP revision requested?
VI. What are the National Ambient Air Quality Standards?
VII. What are the NAAQS for sulfur dioxide?
VIII. What are the requirements for SIP approval?
IX. Does this SIP revision request meet EPA's requirements?
X. What is EPA's final rulemaking action?
XI. Administrative Requirements.

### I. What Action Is Being Taken in This Document?

EPA is approving a site-specific request to revise Illinois' $SO_2$ SIP for the Central Illinois Light Company's E. D. Edwards Generating Station (CILCO Edwards) in Bartonville, Peoria County, Illinois. The revision provides a new set of $SO_2$ emission limits for the plant's three boilers. These new limits were approved by the Illinois Pollution Control Board (IPCB) as a variance from State regulation 35 Illinois Administrative Code (IAC) 214.141 on April 15, 1999. CILCO signed a certification of acceptance and agreement to the variance on May 17, 1999, and Illinois submitted the variance to EPA as a SIP revision on May 21, 1999.

**II. What Is the SIP?**

The State Implementation Plan is a compilation of federally approved State air pollution regulations which are intended to ensure that the State attains and maintains the NAAQS. Revisions to the SIP must be submitted to EPA for approval. Once approved by EPA, the SIP regulations may be enforced by both the State and by EPA.

**III. Does Approval of a Variance Create a Permanent SIP Revision?**

Variances are temporary changes to a regulation. Variances to approved SIP limits must be submitted to EPA, approved, and incorporated into the SIP as SIP revisions in order to be federally enforceable. Without EPA approval, a variance to a SIP rule has no federal standing, and EPA could enforce against the facility for failing to comply with the original limits, even though the State had allowed the rule variance.

The April 15, 1999, CILCO variance expires on February 28, 2002, unless CILCO applies to Illinois for a permanent site-specific SIP revision by that date, in which case the variance will not terminate until July 31, 2003. It is important to note that because the variance is not a permanent rule change, EPA's approval of the variance as a SIP revision will only be in force until February 28, 2002. After that time, if CILCO does not apply to Illinois for a permanent SIP revision, the federally enforceable $SO_2$ emission limits for CILCO Edwards' Boiler 2 will revert to 35 IAC 214.141. If CILCO applies for a permanent SIP revision, and the IPCB allows CILCO Edwards' variance to continue unamended through July 31, 2003, then federal approval of the variance will continue until EPA approves alternate $SO_2$ limits for CILCO Edwards, or until July 31, 2003, whichever is earlier.

**IV. What Has Changed in the Illinois $SO_2$ SIP?**

CILCO Edwards operates three boilers, numbered 1, 2, and 3. Previously, the Illinois $SO_2$ SIP limited the emissions from Boilers 1 and 3 to 6.6 pounds sulfur dioxide per million British Thermal Units (lb/MMBTU), and limited Boiler 2's emissions to 1.8 lb/MMBTU. Illinois' May 21, 1999, submittal provides for the following rule changes:

1. The average $SO_2$ emissions from Boilers 1, 2, and 3, as a group, may not exceed 4.71 lb/MMBTU actual heat input.

2. The average $SO_2$ emissions from any one boiler may not exceed 6.6 lb/MMBTU actual heat input.

3. CILCO Edwards must determine compliance with these limits on a daily basis using the $SO_2$ methodology of the Phase II Acid Rain program set forth in 40 CFR part 75.

The plantwide $SO_2$ emissions limit for CILCO Edwards (35 IAC 214.561), which limits Boilers 1, 2, and 3, as a group, to 34,613 pounds $SO_2$ per hour (lb/hr) on a 24-hour average, is unchanged in the May 21, 1999, SIP revision request and remains in effect for CILCO Edwards. Compliance with the plantwide limit must also be determined on a daily basis using the Phase II Acid Rain methodology.

The variance also requires CILCO to make periodic reports to Illinois of the availability and cost of low-sulfur coal and Phase II Acid Rain allowances, and the feasibility of various strategies for complying with the Phase II Acid Rain program. CILCO must notify Illinois by January 31, 2002, if it intends to request a permanent change to its $SO_2$ emission limits.

**V. Why Was This SIP Revision Requested?**

A 1.8 lb/MMBTU emission limit on coal-fired boilers in the Peoria area (35 IAC 214.141) was adopted by the IPCB to help ensure that the Peoria major metropolitan area would attain and maintain the $SO_2$ NAAQS. This limit applies to Boiler 2 at CILCO Edwards, and Boiler 2 must use low-sulfur coal to comply with the limit. CILCO's coal supplier has notified CILCO that low-sulfur coal will not be available in 2000. No other Illinois coal can be used in Boiler 2 and still comply with the 1.8 lb/MMBTU emission limit. Therefore, CILCO must purchase low-sulfur coal from other States, at a much greater cost. An alternative to using low-sulfur coal in Boiler 2 would be to install a scrubber, which would remove $SO_2$ from the Boiler 2 stack emissions. However, this option is also very costly, and CILCO has stated that a scrubber could not be installed before 2000. Therefore, on December 17, 1998, CILCO filed a petition with the IPCB for a variance from 35 IAC 214.141. As a condition of the variance which the IPCB granted, CILCO must evaluate the feasibility of different strategies for complying with Phase II of the Acid Rain program, including the use of a scrubber, and provide a report of the evaluation to the Illinois Environmental Protection Agency.

**VI. What Are the National Ambient Air Quality Standards?**

The National Ambient Air Quality Standards (NAAQS) allow the American people to assess whether or not the air quality in their communities is healthful. The NAAQS also present state and local governments with the air quality levels they must meet to achieve clean air. Since the Clean Air Act's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. For these common air pollutants there are two types of pollution limits referred to as the primary and secondary standard. The primary standard is based on health effects; and the secondary standard is based on environmental effects such as damage to property, plants, and visibility. The Clean Air Act requires these standards be set at levels that protect public health and welfare with an adequate margin of safety.

**VII. What Are the NAAQS for Sulfur Dioxide?**

The NAAQS for sulfur dioxide are expressed in three forms which are referred to as the annual, 24-hour and 3-hour standards. The $SO_2$ NAAQS are 0.03 ppm, or 80 micrograms per cubic meter ($\mu g/m^3$), on an annual average, 0.14 ppm (365 $\mu g/m^3$) for a 24-hour averaging time, and 0.5 ppm (1300 $\mu g/m^3$) for a 3-hour averaging time.

**VIII. What Are the Requirements for SIP Approval?**

In order to approve a SIP revision, the EPA must determine that the revised rule meets the requirements of section 110 of the Clean Air Act and the provisions of 40 CFR part 51. EPA's criteria for SIP revision approval are contained in 40 CFR part 52, subpart A.

First, revised State rules must be properly adopted by the State, with adequate public notice and participation. The Illinois Environmental Protection Agency submitted documents in its May 21, 1999 submittal which verify that the April 15, 1999, rule variance for CILCO Edwards was properly adopted, with adequate public notice and participation.

In addition, States must provide dispersion modeling results that show that revised $SO_2$ rules will not cause or contribute to a violation of any of the three $SO_2$ NAAQS. EPA's guidance on air quality dispersion modeling is found in 40 CFR part 51, appendix W. CILCO provided air dispersion modeling data to demonstrate that facility operations under the new emission limits would not lead to a violation of the $SO_2$ NAAQS. The Illinois Environmental Protection Agency also provided supplemental modeling information.

The dispersion modeling information meets EPA's requirements.

Finally, the State must demonstrate that the emission limits contained in the revised rule are enforceable. CILCO Edwards uses a Continuous Emissions Monitoring system (CEM) to measure its $SO_2$ emissions. The rule variance requires CILCO Edwards to determine compliance with its $SO_2$ limits on a daily basis using the $SO_2$ methodology of the Phase II Acid Rain program set forth in 40 CFR part 75. These compliance methods are acceptable.

## IX. Does This SIP Revision Request Meet EPA's Requirements?

EPA has determined that this SIP revision request meets the requirements for SIP approval, because it is a properly adopted State rule variance which is enforceable and protective of the $SO_2$ NAAQS. For additional information, see the Technical Support Document for this SIP revision request.

## X. What Is EPA's Final Rulemaking Action?

EPA is approving the May 21, 1999 site-specific $SO_2$ SIP revision request for the Central Illinois Light Company's Edwards Generating Station in Peoria County, Illinois. Because the CILCO Edwards variance is not a permanent rule change, EPA's approval of the variance as a SIP revision will only be in force until the variance expires on February 28, 2002. After that time, if CILCO does not apply to Illinois for a permanent SIP revision, the federally enforceable $SO_2$ emission limits for CILCO Edwards' Boiler 2 will revert to 35 IAC 214.141. If CILCO applies for a permanent SIP revision, and the IPCB allows CILCO Edwards' variance to continue unamended through July 31, 2003, as stated in the variance, then federal approval of the variance will continue until EPA approves alternate $SO_2$ limits for CILCO Edwards, or until July 31, 2003, whichever is earlier. This action will be effective on June 12, 2000.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by May 15, 2000. Should the Agency receive such comments, it will publish a withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on June 12, 2000.

## XI. Administrative Requirements

A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

### A. Executive Order 12866

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

### B. Executive Order 13045

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

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

### C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

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

### D. Executive Order 13132

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

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and

responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**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 the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted 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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

**H. National Technology Transfer and Advancement Act**

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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

**I. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 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, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: March 28, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

For the reasons stated in the preamble, 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. 7401–7671q.

## Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(155) to read as follows.

**§ 52.720 Identification of plan.**

* * * * *

(c) * * *

(155) On May 21, 1999, the Illinois Environmental Protection Agency submitted a temporary, site-specific revision to the State Implementation Plan (SIP) for sulfur dioxide ($SO_2$) for the Central Illinois Light Company's E.D. Edwards Generating Station in Peoria County, Illinois (CILCO Edwards). The SIP revision took the form of an April 15, 1999, Opinion and Order of the Illinois Pollution Control Board (PCB 99–80, Variance-Air). In this Opinion and Order, the IPCB granted CILCO Edwards a variance from 35 Illinois Administrative Code 214.141, and provided for a relaxation in the fuel quality limit for one of the facility's three boilers, but added an overall fuel quality limit and retained an overall $SO_2$ emissions cap for the three CILCO Edwards boilers. The variance will expire on February 28, 2002, unless CILCO applies to Illinois for a permanent SIP revision.

*(I) Incorporation by Reference*

An April 15, 1999, Opinion and Order of the Illinois Pollution Control Board in PCB 99–80 (Variance-Air), granting a variance from 35 IAC 214.141 for Boiler No. 2 at the Central Illinois Light Company's E.D. Edwards Generating Station near Peoria, Illinois. The variance expires on February 28, 2002, unless CILCO applies to Illinois for a permanent SIP revision. If CILCO applies for a permanent SIP revision,

and the IPCB allows CILCO Edwards' variance to continue unamended through July 31, 2003, as stated in the Opinion and Order, then federal approval of the variance will continue until EPA approves alternate $SO_2$ limits for CILCO Edwards, or until July 31, 2003, whichever is earlier.

[FR Doc. 00–8952 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300991; FRL–6553–7]**

**RIN 2070–AB78**

## Fenhexamid; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for fenhexamid (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide) in or on almond, nutmeat at 0.02 parts per million (ppm), almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm. The TM-402 Fungicide Task Force which is comprised of Tomen Agro, Inc. and Bayer Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective April 13, 2000. Objections and requests for hearings, identified by docket control number OPP–300991, must be received by EPA on or before June 12, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300991 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Mary L. Waller, Product Manager 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9354; and e-mail address: waller.mary@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300991. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### II. Background and Statutory Findings

In the **Federal Register** of February 25, 2000 (65 FR 10078) (FRL–6494–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of an amendment to pesticide petition (PP 7F4890) for tolerances, by the TM-402 Fungicide Task Force (Tomen Agro, Inc, 100 First Street, Suite 1610, San Francisco, CA 94105 and Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120–0013). This notice included a summary of the petition prepared by the TM-402 Fungicide Task Force. The registrant is Tomen Agro, Inc. There were no comments received in response to the notice of filing.

The amended petition requested that 40 CFR 180.553 be amended by establishing tolerances for the fungicide, fenhexamid in or on almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory

requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

### III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fenhexamid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances in or almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

#### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenhexamid are discussed in this unit.

1. *Acute toxicity*— i. The acute oral $LD_{50}$ and acute dermal $LD_{50}$ for rats was > 5,000 milligrams/kilogram (mg/kg) for both sexes. The acute inhalation $LC_{50}$ for rats was > 5.06 milligrams/liter (mg/L) for both sexes. Fenhexamid was not an eye or skin irritant and was not a dermal sensitizer.

ii. In an acute neurotoxicity study, rats were gavaged with a single oral dose of fenhexamid at dose levels of 0, 200, 630, or 2,000 mg/kg. The rats were observed for 14 days. Functional observational battery and motor activity testing were performed 7 days prior to dosing, approximately 20 minutes to 3 hours post-dosing, and on days 7 and 14. The no observed adverse effect level (NOAEL) in males was 630 mg/kg. The NOAEL in females was 2,000 mg/kg. The lowest observed adverse effect level (LOAEL) in males was 2,000 mg/kg based on a marginally decreased mean body temperature (the only treatment-related effect noted in the study). The LOAEL in females was not established.

2. *Subchronic toxicity*— i. In an inhalation toxicity range-finding study, 10 rats/sex/dose were exposed (head/nose only) to fenhexamid at concentrations of 0, 11.8, 97.7, or 1,092.6 mg/$m^3$ in air for 6 hours per day for 5 days. One-half of the rats were sacrificed 7 days after the first exposure and the other one-half were sacrificed 21 days after the first exposure. The NOAEL was 0.098 mg/L and the LOAEL was 1,092 mg/L based on the observations of macroscopic grey coloration of the lungs and marginally increased lung weights.

ii. In a 21-day dermal toxicity study, fenhexamid was applied to the shaved skin of 5 male and female rabbits at a dose level of 1,000 mg/kg/day for 17 days over a 3-week period. There were no compound related effects. The NOAEL was 1,000 mg/kg/day and the LOAEL was > 1,000 mg/kg/day for both systemic and local effects on the skin.

iii. In a 28-day oral toxicity range finding study, 10 rats/sex/dose were gavaged at dose levels of 0, 100, 300, or 1,000 mg/kg/day for 28 days. There were no compound-related effects in mortality, clinical signs, body weight, food consumption, hematology, clinical chemistry, organ weights, or gross and histologic pathology. The NOAEL was 1,000 mg/kg/day.

iv. In a 90-day oral toxicity study, 10 rats/sex/dose were fed fenhexamid at dose levels of 0, 2,500, 5,000, 10,000, or 20,000 ppm (0, 202, 415, 904, and 1,904 mg/kg/day for males and 0, 270, 549, 1,132, and 2,824 mg/kg/day for females). No treatment-related changes were seen in clinical signs, mortality, opthalmoscopic examinations, hematology, urinalyses, or gross pathology. The NOAEL was 5,000 ppm in males and 10,000 ppm in females. The LOAEL in males was 10,000 ppm based on decreased terminal body weights and body weight gains, increased food consumption, decreased food efficiency and increased Alanine amino-transferase (ALAT) levels. The LOAEL in females was 20,000 ppm based on increased food consumption, decreased food efficiency, decreased liver weights and liver histopathology (Kupffer cell proliferation and altered hepatocyte morphology).

v. In a 90-day oral toxicity study, 4 dogs/sex were fed fenhexamid at dose levels of 0, 1,000, 7,000, or 50,000 ppm (0, 33.9, 239.1, or 1,747.7 mg/kg/day for males and 0, 37, 261, or 1,866.2 mg/kg/day for females). The NOAEL in males and females was 1,000 ppm. The LOAEL in males and females was 7,000 ppm based on significant increases in Heinz bodies in males and females and increased absolute and relative liver weights in females.

vi. In a 90-day oral toxicity study, 10 mice/sex/dose were fed fenhexamid at dose levels of 0, 100, 1,000, or 10,000 ppm (0, 26.5, 266.5, or 3,283.5 mg/kg/day in males and 0, 51.6, 453.9, or 5,151.1 mg/kg/day in females) for 14 weeks. The NOAEL in males and females was 1,000 ppm. The LOAEL in males and females was 10,000 ppm based on the observation in both sexes of: Increased serum cholesterol, bilirubin and creatinine, decreased kidney weights, increased water consumption, increased food consumption (males), decreased food efficiency (males), renal cortical tubular basophilia (both sexes), renal protein casts and cellular detritus (males), and marginal alterations of liver function (increased serum cholesterol, bilirubin, decreased Aspartate amino-transferase (ASAT), ALAT, marginal increase in liver weights and reduced glycogen content of hepatocytes (males).

vii. In a 56-day oral toxicity study, 10 rats/sex/dose were fed fenhexamid at dose levels of 0, 1,000, 5,000, 10,000, 15,000, or 20,000 ppm (0, 57.5, 284.7, 575.7, 943.8, or 1,217.1 mg/kg/day for males and 0, 78, 407.1, 896.5, 1,492.5, or 1,896.7 mg/kg/day for females). At 20,000 ppm, rats had fenhexamid plasma levels below the level of detection. Urine samples showed measurable excretion of conjugated fenhexamid indicating intestinal absorption in the dose range examined. Males had a maximum excretion rate at 15,000 ppm indicating a saturation of intestinal absorption between 15,000 and 20,000 ppm. Urine excretion in females was somewhat lower than in males, at concentrations of 10,000 ppm and above. The highest value was determined at 20,000 ppm suggesting that saturation in intestinal absorption was not achieved with this dose level in females.

3. *Developmental toxicity*— i. In a developmental toxicity study, 30 rats/dose were gavaged at dose levels of 0 and 1,000 (1,044 determined analytically) mg/kg/day from days 6 through 15 of gestation. At 1,000 mg/kg/day, there were no treatment-related effects on maternal mortality, clinical signs, cesarean parameters or gross pathology. No treatment-related effects were noted in any embryo/fetal parameters. Under the conditions of the study, fenhexamid was not embryotoxic, fetotoxic or teratogenic at a dose of 1,044 mg/kg/day. The NOAEL for developmental and maternal toxicity was < 1,044 mg/kg/day. The LOAEL for maternal toxicity was 1,044 mg/kg/day based on the decreased body weight gain (-12% of controls) during gestation days 6-16 and a decrease in food consumption (10% of controls) during gestation days 6-11.

ii. In a developmental toxicity study, 16 rabbits were gavaged with fenhexamid at dose levels of 0, 100, 300, or 1,000 mg/kg/day from days 6 through 18 of gestation. No treatment-related effects were seen on mortality, general appearance or behavior. The NOAEL for maternal toxicity was 100 mg/kg/day. The LOAEL for maternal toxicity was 300 mg/kg/day based on observations at this dose and above of alterations of excretory products (discolored urine, small scybala), decreased body weight gain and feed consumption (mainly during the first week of the treatment period) and decreased placental weights. One abortion at 300 mg/kg/day and one abortion and two total litter resorptions at 1,000 mg/kg/day were not considered to be treatment-related because the incidences fell within the ranges of historical control data submitted with the study. Reduced and/or light feces were also noted at 1,000 mg/kg/day. Pale livers were noted in the 2 dams that aborted. The NOAEL for developmental toxicity was 300 mg/kg/day. The LOAEL for developmental toxicity was 1,000 mg/kg/day based on marginally decreased male fetal body weights and evidence of delayed ossification. Fenhexamid did not induce any treatment-related fetal malformations or deviations at any of the doses tested under the conditions of this study. All effects on intrauterine development were correlated with maternal toxicity and, therefore, no primary developmental effect was evident. Fenhexamid was not teratogenic up to and including 1,000 mg/kg/day.

4. *Reproductive toxicity*. In 2-generation reproduction study, 30 rats/sex/dose were fed fenhexamid at dose levels of 0, 100, 500, 5,000, or 20,000 ppm (0, 7.6, 38.2, 406, or 1,814 mg/kg/day for males and 0, 9.0, 44.8, 477, or 2,043 mg/kg/day for females determined for the 10-week premating period). There were no compound-related effects on mortality, clinical signs, behavior or reproductive parameters for adult animals. The NOAEL for reproductive toxicity was 20,000 ppm.

The neonatal NOAEL was 500 ppm and the neonatal LOAEL was 5,000 ppm based on significantly decreased pup body weights on lactation days 14 and 21 for the $F_1$ (6-11% < controls) and on lactation days 7, 14, and 21 for $F_2$ pups (9-11% < controls). At 20,000 ppm, significantly decreased pup body weights were observed on lactation days 7, 14, and 21 for $F_1$ pups (15-30% < controls) and for $F_2$ pups (11-19% < controls). Treatment-related decreased pup body weights were not observed at birth or on lactation day 4. An additional effect observed at 20,000 ppm was an increase in the number of pups among the post-weaning $F_1$ pups selected to be $F_1$ parents which died, that is, 0/66, 2/68, 0/68, 0/68, and 10/78 for the control, 100, 500, 5,000, and 20,000 ppm dose groups, respectively. This effect was attributed to the small size of the pups at weaning (30% < controls).

The parental NOAEL was 500 ppm and the parental LOAEL in males was 5,000 ppm based on increased creatinine levels in P-generation (but not $F_1$ generation) males at premating (20%, $p<0.05$) and at termination (20%, not significant); slightly increased alkaline phosphatase levels in P-generation and $F_1$-generation males at premating and at termination (20–34%, not significant); decreased absolute liver weight in P-generation and $F_1$-generation males (11-12%, $p<0.05$) and decreased liver/body weight ratios in P-generation and $F_1$-generation males (8-9%, $p<0.05$ for P-generation and not significant for $F_1$-generation); decreased absolute kidney weights in $F_1$-generation (but not P-generation) males (12%, $p<0.05$); and decreased kidney/body weight ratios in $F_1$-generation (but not P-generation) males (8%, $p>0.05$). The parental LOAEL in females was based on increased alkaline phosphatase levels in $F_1$-generation) (but not P-generation) females at premating (43%, $p<0.05$) and at termination (63%, $p<0.05$); and on very small increases in gamma glutamyl transferase (GGT) (not considered to be biologically relevant). Overall, treatment-related effects observed at 5,000 ppm in males and females were also observed at 20,000 ppm, but were slightly increased in severity. Toxicologically relevant additional toxicological effects observed at 20,000 ppm were decreased body weights and increased food consumption in males and increased urea nitrogen and creatinine levels, decreased kidney weights, decreased body weights and increased food consumption in females.

5. *Mutagenicity*. No mutagenicity was noted in the following assays: Reverse gene mutation, *S. typhimurium*, *E. coli*; forward gene mutation -Hypoxanthine guanine phophoribosyl transferase (HGPRT) locus; Chromosome aberration, Chinese hampster ovary (CHO) cells; unscheduled DNA synthesis, rat hepatocytes; and micronucleus assay in mice.

6. *Chronic toxicity*— i. In a 1-year chronic oral toxicity study, dogs were fed dose levels of 0, 500, 3,500, or 25,000 ppm (0, 17.4, 124.3, or 917.8 mg/kg/day for males and 0, 19.2, 132.7, or 947.1 mg/kg/day for females). The NOAEL in males and females was 500 ppm. The LOAEL was 3,500 ppm in males and females based on decreases in red blood cells (RBC), hemoglobin (Hb), and hematocrit (Hct) and on significant increases in Heinz bodies in both sexes, increased adrenal weight parameters in females, and the presence of intracytoplasmic vacuoles in the adrenal cortex of 3/4 females.

ii. In a combined chronic toxicity/carcinogenicity study, 50 rats/sex/dose were fed fenhexamid at dose levels of 0, 500, 5,000, or 20,000 ppm (0, 28, 292, or 1,280 mg/kg/day for males and 0, 40, 415, 2,067 mg/kg/day for females) for 24 months. The NOAEL in males and females was 500 ppm. The LOAEL for chronic toxicity in males and females was 5,000 ppm based on observations of decreased body weight gain (-6.8%) and food efficiency (-11.8%) in females, increased incidence of cecal mucosal hyperplasia in males, increased cellularity (hyperplasia) of the bone marrow in females and the presence of splenic extramedullary hematopoiesis in males. At 20,000 ppm, observations were increased food consumption, increased numbers of circulating reticulocytes, enlarged spleens observed macroscopically, increased splenic weights and thyroid colloid alterations (both sexes). Fenhexamid was non-oncogenic at doses up to and including 20,000 ppm in the diet. At doses tested, there were no treatment related increases in tumor incidence, tumor spectrum or latency when compared to controls.

7. *Carcinogenicity*. In a carcinogenicity study, 50 mice/sex/dose were fed fenhexamid at dose levels of 0, 800, 2,400, or 7,000 ppm (0, 247.4, 807.4, or 2,354.8 mg/kg/day for males and 0, 364.8, 1,054.5, or 3,178.2 mg/kg/day for females) for 2 years. The NOAEL for males was 800 ppm and the NOAEL for females was 2,400 ppm. The LOAEL for males was 2,400 ppm based on the observation of decreased kidney weights and decreases in sex-specific vacuolation of the proximal tubules in the kidneys in males. A marginal decrease in body weights (up to 8%) and body weight gain (17%) was observed in males at 7,000 ppm. The LOAEL for females was 7,000 ppm based on significantly increased water consumption, decreased kidney weights, and renal histopathology (increased incidence of basophilic cortical tubules). Fenhexamid was not oncogenic in mice at doses up to and including 7,000 ppm. There were no treatment related increases in tumor incidence, tumor spectrum or latency when compared to controls.

8. *Dermal absorption*. In a dermal absorption study, radiolabeled fenhexamid (50% formulation) was applied to the shaved skin of male rats at dose levels of 0.00138, 0.0147, or 0.148 mg/cm$^2$. A volume of 100 µL was applied to a skin area of approximately 12.5 cm$^2$ on each rat. Four rats/dose level were sacrificed at 0.5, 1, 2, 4, 10, 24, and 120 hours postdose. Mean total recovery of radioactivity ranged from 90.3% to 97.6% of the applied dose. The majority of radioactivity was recovered from the skin wash (69.9% to 96.1%). Radioactivity in the skin test site ranged from 0.44% to 10.2%; in the urine from ''not detectable'' to 3.34%; and in the feces from ''not detectable'' to 11.6% of the applied dose. Radioactivity in blood did not exceed 0.03% and in the carcass did not exceed 9.37%. Estimates of dermal absorption were based on the sum of radioactivity (as test material) in the skin test site, urine, feces, blood and carcass. The percentage dermal absorption decreased with increasing dose levels. The percentage dermal absorption at 10 hours postdose was 19.58%, 7.62%, and 2.63% and at 120 hours postdose was 21.0%, 6.91%, and 2.13% for the low, mid and high dose levels respectively.

9. *Metabolism*. In a metabolism study, rats were administered radiolabeled fenhexamid (a single oral low dose of 1 mg/kg, a single oral high dose of 100 mg/kg, or 15 repeated low doses of 1 mg/kg/day). Radiolabeled fenhexamid was rapidly absorbed from the gastrointestinal (GI) tract in all dose groups. After single and repeated administration of the low dose, the plasma concentration peaked within 5 to 10 minutes. After administration of the high dose, the maximum was detected 40 to 90 minutes postdosing. The absorption of the test compound was shown to be almost complete in a bile-cannulation experiment, as more than 97% of the administered dose was absorbed from the GI tract 48 hours after intra-duodenal administration. These results are indicative of a pronounced first pass effect and enterohepatic circulation. Tissue residues declined rapidly and after 48 hours the total radioactivity residue in the body excluding the GI tract, was < 0.3% of the administered dose in all dose groups. Liver and kidney were the organs with the highest concentrations of radioactivcity in all dose groups. Excretion was rapid and almost complete with feces as the major route of excretion. Approximately 62-81% of the recovered radioactivity was found in feces, and 15-36% in urine within 48 hours post-dosing. More than 90% of the recovered radioactivity was eliminated with bile in the bile cannulation experiment. Only 0.02% of the administered radioactivity was recovered in exhaled air. Radioactive residues in rat bodies (excluding GI tract) were significantly lower in females after a single high dose. There was significantly higher renal excretion for females in comparison with males after 15 repeated low doses. In both sexes renal excretion was significantly higher after a single low dose when compared with a single high dose. Metabolite characterization studies showed that the main component detected in excreta was the unchanged parent compound which accounted for 62–75% of the dose independent of the dosing regime and sex. Metabolite 1, the glucuronic acid conjugate of the parent compound, ranged from 4 to 23% of the dose. Metabolite fractions 2 and 3 accounted for up to 3 and 7% of the dose, respectively. The proposed major pathway for biotransformation is via conjugation of the aromatic hydroxyl group with glucuronic acid. Prior to fecal excretion, hydrolysis in the intestine converts the conjugate back to the parent compound giving rise to enterohepatic circulation. Identification of radioactive residues ranged from 88% to 99% and was independent of dose and sex.

*B. Toxicological Endpoints*

1. *Acute toxicity*. An acute toxicological endpoint was not identified resulting from a single oral exposure, and therefore, an acute Reference Dose (RfD) was not selected.

2. *Short- and intermediate-term toxicity*. A short- and intermediate-term dermal endpoint of 1,000 mg/kg/day from the 21-day dermal toxicity study in rabbits was selected for occupational exposure. No short- and intermediate-term endpoint was selected for non-occupational exposure as there are no residential uses of fenhexamid.

3.*Chronic toxicity*. EPA has established the RfD for fenhexamid at 0.17 mg/kg/day. This RfD is based on a 1-year feeding study in dogs with a NOAEL = 17 mg/kg/day. An additional 3x FQPA safety factor was added and applies to all population subgroups resulting in a chronic population adjusted dose (cPAD) of 0.057 mg/kg/day.

4. *Carcinogenicity*. Fenhexamid was classified as a ''not likely'' human carcinogen based on the lack of evidence of carcinogenicity in mice and rats and the lack of genotoxicity in a battery of mutagenicity studies.

*C. Exposures and Risks*

1. *Dietary*— i. *From food and feed uses*. Tolerances are currently established for fenhexamid at 40 CFR 180.553 for grapes at 4.0 ppm, strawberries at 3.0 ppm, and raisins at 6.0 ppm. Additional tolerances are being proposed as follows: almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from fenhexamid as follows:

a. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No toxicological endpoint attributable to a single (acute) dietary exposure was identified.

b. *Chronic exposure and risk*. The chronic risk analysis used the cPAD of 0.057 mg/kg/day which applies to all population subgroups. The Dietary Exposure Evaluation Model (DEEM™) which is a exposure analysis system that estimates exposure to a pesticide chemical in food comprising the diets of the U.S. population, including population subgroups was used to conduct the chronic (food) risk analysis. DEEM™ contains food consumption data as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989-1992. The chronic food exposure was calculated assuming theoretical maximum residue contribution (TMRC) values, and 100% crop treated estimates. The percent of the cPAD utilized is as follows: 15.7 for non-nursing infants; 14.2 for all infants (<1 year); 10.7 for nursing infants; 9.9 for children (1-6 years); 5.7 for non-Hispanic/non-white/non-black; 5.0 for children (7 to 12 years); 4.6 for U.S. population (summer season); 3.7 for U.S. population (total) and 2.6 for females (13-50 years).

ii. *From drinking water*. In soil, fenhexamid is relatively immobile ($K_{oc}$ = 446) and non-persistent ($t_{1/2}$ = ≥ 1 day). Fenhexamid is not expected to be a ground water contaminant, but has some potential to reach surface water on eroded soil particles. In surface water, fenhexamid would be expected to photodegrade rapidly ($t_{1/2}$ = ≥ 0.2 days).

No monitoring data are available to perform a quantitative drinking water assessment. The Agency estimated surface water exposure using the Generic Expected Environmental Concentration (GENEEC) model, a

screening level model for determining concentrations of pesticides in surface water. GENEEC uses the soil/water partition coefficient, hydrolysis half life, and the maximum label rate to estimate surface water concentration. GENEEC contains a number of conservative underlying assumptions. Therefore, the drinking water concentrations derived from GENEEC for surface water are likely to be overestimated. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for fenhexamid: 0.75 lb. active ingredient/acre x 4 applications/acre/year. The estimated environmental concentrations (EECs) derived from GENEEC are 17 µg/L (peak value) and 4.8 µg/L (56-day average).

The Agency used the Screening Concentration in Ground Water (SCI-GROW) model to estimate pesticide levels in ground water. The SCI-GROW model is based on actual monitoring data collected for a number of pesticides that serve as benchmarks to predict EECs in ground water. Using SCI-GROW, the EEC calculated for fenhexamid is 0.0007 µg/L (acute and chronic).

a. *Acute exposure and risk*. Drinking water levels of comparison (DWLOCs) for acute exposure were not calculated as there was no appropriate toxicological endpoint attributable to a single (acute) dietary exposure.

b. *Chronic exposure and risk*. Chronic (non-cancer) DWLOCs were calculated for the U.S. population and the population subgroups with the highest (chronic) food exposure. The DWLOCs are as follows: 480 µg/L for infants/children; 1,700 µg/L for females 13-50 yrs.); and 1,900 µg/L for the U.S. population and all other subgroups. The EEC (0.0007 µg/L from SCI-GROW, and 4.8 µg/L from GENEEC) for fenhexamid are well below the DWLOCs and therefore, are below the Agency's level of concern. Therefore, the Agency concludes with reasonable certainty that residues of fenhexamid in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *From non-dietary exposure.* Fenhexamid is not registered for use on residential non-food sites. Therefore, no non-occupational, non-dietary exposure and risk are expected.

3. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fenhexamid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

*D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk*. Acute aggregate risk is the sum of exposures resulting from acute dietary food + acute drinking water. The Agency did not identify an appropriate toxicological endpoint attributable to a single (acute) dietary exposure.

2. *Chronic risk*. Using the TMRC, exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fenhexamid from food will utilize 3.7% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (< 1 year) discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenhexamid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenhexamid residues.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Although short- and intermediate-term endpoints were identified, there are no residential uses for fenhexamid.

4. *Aggregate cancer risk for U.S. population*. Fenhexamid was classified as ''not likely'' to be a human carcinogen.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenhexamid residues.

*E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of fenhexamid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Prenatal and postnatal sensitivity.* Qualitatively, there is evidence of increased susceptibility in rat pups compared to adults, based on the relative severity of effects in the two-generation reproduction study in rats. The effects on pups were of concern because: significant pup body weight decreases were observed in both the $F_1$ and the $F_2$ generations; the pup body weight decreases in the $F_2$ generation were observed during early lactation (lactation day 7 through day 21) when the pups are exposed to the test material primarily through the mother's milk; the

pup body weight decreases in the $F_1$ generation were observed during late lactation (lactation days 14 through 21) when the pups are exposed to the test material through the mother's milk and through the feed; and, in the metabolism study on fenhexamid, glucuronidation of fenhexamid was clearly demonstrated to be the single major route of metabolism, detoxification and excretion of fenhexamid in adult male and female rats. The demonstrated poor glucuronidation capacity of rat pups between days 7 and 21 indicates a possibly increased sensitivity of pups and serves to support a concern for neonatal toxicity.

iii. *Conclusion*. There is a complete toxicity data base for fenhexamid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Although there is qualitative evidence of increased susceptibility, the Agency decided that an additional safety factor of 3x would be appropriate based on the following reasons: The increased susceptibility demonstrated in the 2-generation reproduction study was only qualitative (not quantitative) evidence and was observed only in the presence of parental toxicity; the qualitative offspring effect was limited to decreased body weight and no other adverse effects (e.g., decreased pup survival, behavioral alterations, etc.) were observed; and there is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the prenatal developmental toxicity studies with fenhexamid.

2. *Acute risk*. An acute endpoint was not identified.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that the highest aggregate exposure to fenhexamid from food will utilize 15.7% of the cPAD for non nursing infants. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenhexamid in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk*. There are no residential uses and thus these risks are not presented.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenhexamid residues.

## IV. Other Considerations

### *A. Metabolism in Plants*

The parent compound, fenhexamid, is the only compound of concern. Radiolabeled fenhexamid plant metabolism studies were conducted on grapes, tomatoes, and apples. The qualitative nature of fenhexamid residues in plants is adequately understood. The data indicate very little translocation of residues, i.e., residues of fenhexamid are non-systemic and are thus primarily surface residues.

### *B. Metabolism in Animals*

Almond hulls which are a livestock feed item contain 90% dry matter and its contribution to the livestock diet is a maximum of 10% each for beef and dairy cattle. Data from a study investigating the metabolism of $^{14}C$ fenhexamid in a lactating goat indicated that the metabolism of fenhexamid in the goat is similar to that in the rat, and based on the experimentally determined feeding level of 133 ppm in the feed, the Agency calculates that the dosage was equivalent to 605x the maximum theoretical dietary burden of 0.22 ppm for beef and dairy cattle. The total radioactive residues (TRR) were 0.045–0.212 ppm in milk, 4.682 ppm in liver, 3.267 ppm in kidney, 0.035 ppm in muscle, and 0.085 ppm in fat.

The qualitative nature of the residue in ruminants is adequately understood. Based on the goat metabolism study, the Agency concludes that there is no reasonable expectation of finite residues in milk or ruminant tissues as a result of the currently proposed uses on almonds and stone fruits, and ruminant commodity tolerances are not required.

### *C. Analytical Enforcement Methodology*

Adequate enforcement methodology (a high performance liquid chromotography method with electrochemical detection) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

### *D. Magnitude of Residues*

A total of five almond field trials were conducted in California. The almond field trial data are adequate in number and geographical representation. The data indicate that residues of fenhexamid will not exceed the proposed tolerances of 0.02 ppm in/on almond nutmeats and 2.0 ppm in/on almond hulls following applications of the proposed 50% WDG formulation according to the maximum proposed use patterns. Samples of almond RACs were harvested 142–173 days following the last of four sequential applications of the 50% WDG formulation at 0.73–0.76 lb ai/acre/application (3.0 lbs active ingredient acre/season (ai/acre/season); 1x the proposed maximum seasonal application rate). Residues of fenhexamid were non-detectable (<0.02 ppm) in/on all treated almond nutmeat samples.

Field trial data were submitted for cherries (sweet and tart), peaches, and plums, which are the three representative commodities of the stone fruits crop group (40 CFR 180.41, Crop Group 12). Samples (U.S. field trials) were harvested 0-days following the last of four sequential foliar applications of the 50% WDG formulation at 0.73–0.78 lb ai/acre/application (3.0 lbs ai/acre/season; 1x the proposed maximum seasonal application rate). Residues of fenhexamid (uncorrected for method recovery and storage stability data) in/on treated samples ranged from 0.844–1.826 ppm for sweet cherries, 1.049–4.950 ppm for tart cherries, 0.327-2.131 ppm for peaches, and <0.05–0.366 ppm for plums. The residue data for stone fruits indicates that the maximum residues for tart cherries (4.950 ppm) and plums (0.366 ppm) differ by a factor of 13.5. On this basis, the Agency concludes that plums should be excluded from the proposed stone fruits crop group tolerance, and an individual tolerance is being established for residues of fenhexamid in/on plums (fresh prunes) at 0.5 ppm.

No processing study data have been submitted for dried prunes. Based on the concentration factor which has previously been shown to occur in the processing of fenhexamid-treated grapes to raisins, it is probable that concentration of fenhexamid residues will occur in the processing of plums (fresh prunes) to dried prunes. The Agency concludes that the appropriate tolerance level for residues of fenhexamid *per se* in/on dried prunes is 1.0 ppm. This is based upon the highest average field trial (HAFT) residue value (0.264 ppm) for plums (fresh prunes) multiplied by the TMCF (3.4x) for dried prunes =0.90 ppm, which is rounded up to 1.0 ppm.

### *E. International Residue Limits*

The Codex Alimentarius Commission has not established maximum residue limits (MRLs) for residues of fenhexamid or any of its metabolites in/on plant or animal commodities.

Harmonization is thus not an issue for this action.

*F. Rotational Crop Restrictions*

The Agency concluded that a 30-day plantback interval is required for all crops without a fenhexamid tolerance.

**V. Conclusion**

Therefore, tolerances are established for residues of fenhexamid in or on almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm and prune, dried at 1.0 ppm.

**VI. Objections and Hearing Requests**

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300991 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 12, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300991, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**VII. Regulatory Assessment Requirements**

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income*

*Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

### VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.553 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

**§ 180.553 Fenhexamid; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| Almond, hull | 2.0 |
| Almond, nutmeat | 0.02 |
| * * * * * | |
| Plum (fresh prune) | 0.5 |
| Prune, dried | 1.0 |
| * * * * * | |
| Stone fruit, except plum (fresh prune) | 6.0 |
| * * * * * | |

* * * * *

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## DEPARTMENT OF DEFENSE

## 48 CFR Parts 213, 225, 242, and 252

**[DFARS Case 98–D028]**

## Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). These amendments conform the DFARS to the Federal Acquisition Regulation (FAR) Amendments pertaining to foreign acquisition that were published in the **Federal Register** on December 27, 1999.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 98–D028.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends DFARS Part 225, Foreign Acquisition, and updates related references, for conformance with the FAR Part 25 rewrite that was published at 64 FR 72416 on December 27, 1999 (Federal Acquisition Circular 97–15, Item II). The rule reorganizes the existing DFARS text to align it with the revised FAR text. The rule makes no substantive change to DFARS policy pertaining to foreign acquisition. The following list summarizes the reorganization of the DFARS text:

| Text previously located at | Relocated to |
|---|---|
| 225.000–70 | 225.003 |
| 225.000–71 | 225.001 |
| 225.102 | 225.103 |
| 225.105 | 225.502 |
| Table 25–1 | 225.504 |
| 225.107 | 225.170 |
| 225.108 | 225.104 |
| 225.109(a) | 225.1101(1) |
| 225.109(b) | 225.171(a) |
| 225.109(d) | 225.1101(2) |
| 225.109–70(a) | 225.1101(3) |
| 225.109–70(b) | 225.171(b) |
| 225.303 | 225.304 |
| 225.305–70 | 225.1103(1) |
| 225.401 | 225.003 |
| 225.402(c) | 225.403 |
| 225.403 | 225.401 |
| 225.403–70 | 225.401–70 |
| 225.405 | 225.408 |
| 225.408 | 225.11 |
| 225.602 | 225.901 |
| 225.603 | 225.902 |
| 225.604 | 225.903 |
| 225.605 | FAR 25.1101(e)(2) |
| 225.605–70 | 225.11 |
| 225.702 | 225.701 |
| 225.970 | 225.1070 |
| 225.971 | 225.1103(2) |
| 225.972 | 225.1103(3) |

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D028.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 213, 225, 242, and 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 213, 225, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 213, 225, 242, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.302–2 is amended in paragraph (d) introductory text by revising the first sentence to read as follows:

**213.302–5 Clauses.**

* * * * *

(d) When using the clause at FAR 52.213–4, delete the reference to the clause at FAR 52.225–1, buy American Act-Balance of Payments Program-Supplies. * * *

* * * * *

## PART 225—FOREIGN ACQUISITION

**225.000–70 and 225.000–71 [Removed]**

3. Sections 225.000–70 and 225.00–71 are removed.

4. Sections 225.001 and 225.003 are added to read as follows:

**225.001 General.**

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Defense authorization or appropriations acts (see subpart 225.70); or

(B) DoD policy (see subpart 225.71 and FAR 6.302–3).

(ii) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable the trade agreements.

(2) *Memoranda of understanding or other international agreements.*

(i) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872–1.

(ii) If the product is the product of a qualifying country, evaluate the offer under subpart 225.5 and 225.872–4.

(3) *Trade agreements.*

(i) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).

(ii) If the product is an eligible product under subpart 225.4,evaluate the offer under subpart 225.5.

(iii) If the product is not an eligible product, a qualifying country end product, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c).

(4) *Contractors controlled by terrorist nations.*

(i) Determine whether the contractor is controlled by a terrorist nation.

(ii) If the contractor is controlled by a terrorist nation, comply with 209.104–1(g).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in subpart 225.5.

**225.003 Definitions.**

As used in this part—

(1) ''Caribbean Basin country end product'' includes petroleum or any product derived from petroleum.

(2) ''Defense equipment'' means any equipment, item of supply, component, or end product purchased by the DoD.

(3) ''Domestic concern'' means a concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States.

(4) ''Domestic end product'' has the meaning given in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) ''Eligible product'' means, instead of the definition at FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401–70.

(6) ''Foreign concern'' means any concern other than a domestic concern.

(7) ''Nondesignated country end product'' means any end product which is not a U.S. made end product or a designated country end product.

(8) ''Nonqualifying country'' means a country other than the United States or a qualifying country.

(9) ''Nonqualifying country end product'' means an end product which is neither a domestic nor qualifying country end product.

(10) ''Nonqualifying country offer'' means an offer of a nonqualifying country end products, including the price of transportation to destination.

(11) ''Qualifying country' is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872–1.

(12) ''Qualifying country component'' and ''qualifying country end product'' are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; 252.225–7007. Buy Americn Act—Trade Agreements—Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. ''Qualifying country end product'' is also defined in the clause at 252.225–7021, Trade Agreements.

(13) ''Qualifying country offer'' means an offer of a qualifying country end product, including the price of transportation to destination.

(14) ''Source'' when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

5. Subpart 225.1 is revised to read as follows:

### Subpart 225.1—Buy American Act—Supplies

Sec.

225.103 Exceptions.
225.104 Nonavailable articles.
225.170 Acquisition from or through other Government agencies.
225.171 Solicitations.

**225.103 Exceptions.**

(a)(1)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it

is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

*(1)* If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

*(2)* To ensure access to advanced state-of-the-art commercial technology; or

*(3)* To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

*(i)* For an end item that qualifies as an American good; or

*(ii)* In order not to impair intergration of the military and commerical industrial base.

(B) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

*(1)* At a level above the contracting officer for acquisitions valued at less than $100,000;

*(2)* By the head of the contracting activity for acquisitions valued at $100,000 or more but less than $1,000,000; or

*(3)* By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.103(b)(2)(i), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed $25,000;

(B) By the chief of the contracting officer if the acquisition is estimated not to exceed $250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed $2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.104(a)(iii) or FAR 25.104(a);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Supply Center, Philadelphia, when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

#### 225.104 Nonavailable articles.

(a)(i) DoD has determined that the articles, materials, and supplies listed in FAR 25.104(a) and in paragraph (a)(iii) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR Subpart 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(iii)(A) Aluminum clad steel wire.

(B) Sperm oil.

#### 225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

#### 225.171 Solicitations.

(a) For oral solicitations, inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(1) The items are excepted either on a blanket or an individual basis; or

(2) The price of the nonqualifying country end product is the low offer under the evaluation procedures in subpart 225.5.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

6. Section 225.202 is revised to read as follows:

#### 225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a) or in 225.104(a)(iii). For other materials, a nonavailability determination must be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level.

7. Subpart 225.3 is revised to read as follows:

## Subpart 225.3—Balance of Payments Program

Sec.
225.302 Policy.
225.304 Procedures.

#### 225.302 Policy.

(1) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

(i) Apply to acquisitions for foreign military sales;

(ii) Do not apply to services, except services which primarily involve the acquisition of supplies;

(iii) Do not apply to qualifying country end products;

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and

(v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(2)(i) Before solicitation, the determinations required by FAR 25.303(b) may be made by the following individuals or their immediate deputies:

**ARMY**

Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, U.S. Army Material Command
Commander in Chief, U.S. Army Europe and DCSLOG, U.S. Army, Europe
Commander Eighth U.S. Army and Chief of Staff, Eighth U.S. Army
Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command

Commander, U.S. Army, South

**NAVY**

Commander-in-Chief, U.S. Naval Forces, Europe
Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines
Commander-in-Chief, U.S. Atlantic Fleet
Commander-in-Chief, U.S. Pacific Fleet
Commander, Military Sealift Command
Commandant, U.S. Marine Corps
Commander, Naval Facilities Engineering Command
Commanding General, III Marine Amphibious Force

**AIR FORCE**

Commander, U.S. Air Forces in Europe
Commander, Pacific Air Forces
Commander, Air Mobility Command
Commander, Air Force Materiel Command
Commander, Air Combat Command
Commander, Air Force Space Command

**ADVANCED RESEARCH PROJECTS AGENCY**

Director, Contracts Management Office

**DEFENSE INFORMATION SYSTEMS AGENCY**

Director

**DEFENSE LOGISTICS AGENCY**

Executive Director, Procurement

**NATIONAL IMAGERY AND MAPPING AGENCY**

Deputy Director for Acquisition, Installations, and Logistics

**DEPARTMENT OF DEFENSE EDUCATION ACTIVITY**

Director

(ii) The authority to make the determinations referred to in paragraph (2)(i) of this section may be redelegated below the levels specified in that paragraph for acquisitions estimated at 500,000 or less in foreign cost.

(3)(i) This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(ii) DoD has determined that requirements for the items on the lists at FAR 25.104(a) and at 225.104(a)(iii) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned:

(i) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program).

(ii) Industrial gases.

(iii) Brand drugs specified by the Defense Medical Materiel Board.

(iv) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick.

(v) Overhaul and repair of vessels, aircraft, and vehicles which—

(A) Are home-ported/stationed/deployed overseas; and

(B) Cannot practically return to the United States or to U.S. operated repair facilities.

(vi) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than $100,000.

(5)(i) Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider direct purchase. Consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

**225.304 Procedures.**

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation of offers.*

(i) Use the evaluation procedures in subpart 225.5 instead of the evaluation procedures in FAR subpart 25.5. Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in Subpart 225.5 result in the award of nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interests. If no domestic end product offers are received, the determination in FAR 25.303(b)(1) is not required.

8. Subpart 225.4 is revised to read as follows:

## Subpart 225.4—Trade Agreements

Sec.
225.401 Exceptions.
225.401–70 Products subject to trade agreement acts.
225.402 General.
225.403 Trade Agreements Act.
225.408 Procedures.

**225.401 Exceptions.**

(b)(i) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD (AT&L) DP).

(ii) The following national security/national defense exceptions do not require approval by USD (AT&L) DP:

(A) Where purchase from foreign sources is restricted by the DoD annual appropriations or authorization acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR part 8.

(B) Where competition from foreign sources is restricted under the authority of FAR 6.302–3(a)(2)(i). Provide USD (AT&L) DP a copy of the justification for restricting competition (see FAR 6.303–1(d)).

(C) Where competition from foreign sources is restricted under subpart 225.71.

**225.401–70 Products subject to trade agreement acts.**

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum. The list of products has been annotated to indicate those products that are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

| FSG | Category/description |
|---|---|
| 22 | Railway equipment |
| 23 | Motor vehicles, trailers, and cycles (except 2350 and buses under 2310) |
| 24 | Tractors |
| 25 | Vehicular equipment components |
| 26 | Tires and tubes |

| FSG | Category/description |
|---|---|
| 29 | Engine accessories |
| 30 | Mechanical power transmission equipment |
| 32 | Woodworking machinery and equipment |
| 34 | Metalworking machinery |
| 35 | Service and trade equipment |
| 36 | Special industry machinery (except 3690) |
| 37 | Agricultural machinery and equipment |
| 38 | Construction, mining, excavating, and highway maintenance equipment |
| 39 | Materials handling equipment |
| 40 | Rope, cable, chain and fittings |
| 41 | Refrigeration and air conditioning equipment |
| 42 | Fire fighting, rescue and safety equipment |
| 43 | Pumps and compressors |
| 44 | Furnace, steam plant and drying equipment (except 4470) |
| 45 | Plumbing, heating, and sanitation equipment |
| 46 | Water purification and sewage treatment equipment |
| 47 | Piping, tubing, hose, and fitting |
| 48 | Valves |
| 49 | Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960) |
| 53 | Hardware and abrasives |
| 54 | Prefabricated structures and scaffolding |
| 55 | Lumber, millwork, plywood, and veneer |
| 56 | Construction and building materials |
| 61 | Electric wire, and power and distribution equipment |
| 62 | Lighting fixtures and lamps |
| 63 | Alarm and signal systems |
| 65 | Medical, dental, and veterinary equipment and supplies |
| 66 | Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries |
| 67 | Photographic equipment |
| 68 | Chemicals and chemical products |
| 69 | Training aids and devices |
| 70 | General purpose ADPE, software, supplies, and support equipment |
| 71 | Furniture |
| 72 | Household and commercial furnishings and appliances |
| 73 | Food preparation and serving equipment |
| 74 | Office machines, visible record equipment and ADP equipment |
| 75 | Office supplies and devices |
| 76 | Books, maps, and other publications |
| 77 | Musical instruments, phonographs, and home type radios |
| 78 | Recreational and athletic equipment |
| 79 | Cleaning equipment and supplies |
| 80 | Brushes, paints, sealers, and adhesives |
| 81 | Containers, packaging and packing supplies (except 8140) |
| 84 | Luggage (only 8460)—See FAR 25.003 for exclusion of luggage for Caribbean Basin countries |
| 85 | Toiletries |
| 87 | Agricultural supplies |
| 88 | Live animals |
| 91 | Fuels, oils, and waxes |
| 93 | Nonmetallic fabricated materials |
| 94 | Nonmetallic crude materials |
| 96 | Ores, minerals, and their primary products |
| 99 | Miscellaneous |

**225.402 General.**

(1) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401–70).

(2) See subpart 225.5 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

**225.403 Trade Agreements Act.**

(c)(i) Except as provided in paragraphs (c)(ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872–1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements.

In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii)(A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

**§ 225.408 Procedures.**

(a)(4) The requirements of FAR 25.408(a)(4) do not apply to offshore acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

9. Subpart 225.5 is added to read as follows:

## Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

Sec.

225.502 Application.
225.504 Evaluation examples.

**§ 225.502 Application.**

Use the following procedures instead of those in FAR 25.502. These procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. As used in this section, the term ''nonqualifying country offer'' may also apply to an offer that is not an eligible offer under a trade agreement (see 225.504(4)).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see 225.504 (1)).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation (see 225.504(1)(ii)).

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(3) When application of the factor would not result in the award of a domestic end product, *i.e.,* when no domestic offers are received (see 225.504(3)) or when a qualifying country offer is lower than the domestic offer (see 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, evaluate the

nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (see 225.504(2)(i) and (3)(i)).

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of ''domestic end production'' is more restrictive than the definition for—

(A) ''U.S. made end product'' under trade agreements;

(B) ''Domestically produced or manufactured products'' under small business set-asides or small business reservations; and

(C) Products of small businesses under FAR Part 19.

(iii) If an offer is for a ''U.S. made end product,'' ''domestically produced end product,'' or the product of a small business, but is not a ''domestic end product'' as defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer (see 225.504(4)).

**255.504 Evaluation examples.**

(1) Example 1.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

| | |
|---|---|
| Nonqualifying Country Offer (including $100 duty) | $6,000 |
| Domestic Offer | 8,900 |
| Qualifying Country Offer | 9,100 |

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of $9,000.

(ii) Alternate II: Duty Exempted:

| | |
|---|---|
| Nonqualifying Country Offer (including $,1000 duty | $600,000 |
| Domestic Offer | 910,000 |
| Qualifying Country Offer | 920,000 |

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of $900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price, which is awarded at $599,000.

(2) Example 2.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

| | |
|---|---|
| Nonqualifying Country Offer (including $100 duty | $6,000 |
| Domestic Offer | 8,500 |
| Qualifying Country Offer | 7,800 |

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

(ii) Alternate II: Duty Exempted:

| | |
|---|---|
| Nonqualifying Country Offer (including $1,000 duty | $880,500 |
| Domestic Offer | 950,000 |
| Qualifying Country Offer | 880,000 |

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

(3) Example 3.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

| | |
|---|---|
| Nonqualifying Country Offer (including $150 duty | $9,600 |
| Qualifying Country Offer | 9,500 |

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

(ii) Alternate II: Duty Exempted:

| | |
|---|---|
| Nonqualifying Country Offer (including $1,000 duty | $880,500 |
| Qualifying Country Offer | 880,000 |

Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

(4) Example 4.

(i) Alternate I:

| | |
|---|---|
| Offer of U.S. Made End Product which is not a Domestic Offer | $800,000 |
| Domestic Offer | 820,000 |
| Eligible Product | 830,000 |

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of $1,200,000.

(ii) Alternate II:

| | |
|---|---|
| Offer of U.S. Made End Product which is not a Domestic Offer | $800,000 |
| Eligible Product | 820,000 |
| Domestic Offer | 830,000 |

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

## Subpart 225.6—[Removed]

10. Subpart 225.6 is removed.

11. The heading of Subpart 225.7 is revised to read as follows:

## Subpart 225.7—Prohibited Sources

**225.702 [Redesignated as 225.701]**

12. Section 225.702 is redesignated as section 225.701.

13. The heading of Subpart 225.8 is revised to read as follows:

## Subpart 225.8—Other International Agreements and Coordination

14. The heading of section 225.801 is revised to read as follows:

**225.801 General.**

15. Subpart 225.9 is revised to read as follows:

## Subpart 225.9—Customs and Duties

Sec.
225.901 Policy.
225.902 Procedures.
225.903 Exempted supplies

### 225.901 Policy.

(1) Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.903(b)).

(3) Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (*e.g.,* the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and duty already has been paid, DoD will issue duty-free entry certificates for—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreement Act or NAFTA; and

(iii) Other foreign supplies, if there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

### 225.902 Procedures.

(1) *General.*

(i) *Preaward.*

(A) Unless duty was paid prior to submission of the offer, an offer of domestic end products with no nonqualifying country components, an offer of qualifying country end products, or an offer of eligible products under the Trade Agreements Act or NAFTA, should not include duty.

(B) Offers of U.S. made end products with nonqualifying country components, and offers that are neither qualifying country offers nor offers of eligible products under a trade agreement, should contain applicable duty.

(c) Exclude from the evaluation of domestic end products, or information technology end products in Federal Supply Group 70 or 74 in acquisitions subject to the Trade Agreements Act, any duty for nonqualifying country components listed in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, for which duty-free entry will be granted.

(D) Except for acquisitions of information technology end products in Federal Supply Group 70 or 74 subject to the Trade Agreements Act, apply the evaluation procedures for the Buy American Act in accordance with 225.502.

(ii) *Award.* Exclude duty from the contract price for supplies (end products or components) that are to be accorded duty-free entry. If duty-free entry is granted to the successful offeror in accordance with the clause at FAR 52.225–8, Duty-Free Entry, and the clause at 252.225–7003, Information for Duty-Free Entry Evaluation, request that the offeror provide the list of foreign supplies that are subject to such duty-free entry, and list such supplies in the contract clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry.

(iii) *Postaward.*

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.901(3)(i) and the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components); for all eligible products subject to trade agreements in accordance with the policy at 225.901(3)(ii) and the clause at 252.225–7037, Duty-Free Entry—Eligible End Products; and for other foreign supplies in accordance with the policy at 225.901(3)(iii) on contracts containing the clause at FAR 52.225–8, Duty-Free Entry; or (following to the extent practicable the procedures required by the clause at FAR 52.225–8, Duty-Free Entry, and the clause at 252.225–7010, Duty-Free Entry—Additional Provisions) on other contracts—

*(1)* That fall within one of the following categories:

*(i)* Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States, provided the contract states that the final price is exclusive of duty.

*(ii)* Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (a)(iii)(A)*(1)(iii)* of this section.

*(iii)* Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract or fixed-price subcontract intervenes, provided the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

*(2)* For which the supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and for which duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

*(3)* For which such acquisition abroad is authorized by the terms of the contract or subcontract or by the contracting officer.

(B) Under a fixed-price contract, negotiate an equitable reduction in the contract price if duty-free entry is granted for any nonqualifying country component not listed in the Schedule as duty-free, even if contract award was based on furnishing a domestic component or a qualifying country component.

(2) *Formal entry and release.*

(i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

*(1)* Verify the duty-free entitlement of goods entering under the contract; and

*(2)* Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

*(1)* Determine whether a reduction in the contract price is required under the clause at FAR 52.225–8, Duty-Free Entry;

*(2)* If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

*(3)* Determine the price of the foreign supplies exclusive of duty, and advise

the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMC New York, ATTN: Customs Team, DCMDE–GNIC, 207 New York Avenue, Staten Island, NY 10305–5013:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.
Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMC New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Customs Team, DCMDE–GNIC, DCMC New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCMC New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(3) *Immediate entry and release.* Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

**225.903 Exempted supplies.**

(b)(i) The term ''supplies''—

(A) Includes articles known as ''stores,'' such as food, medicines, and toiletries, as well as all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes.

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term ''equipment.''

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency in the following form:

(Date)

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)
(Title)
(Organization

16. Subpart 225.10 is added to read as follows:

## Subpart 225.10—Additional Foreign Acquisition Regulations

Sec.
225.1070 Clause deviations in overseas contracts.

**225.1070 Clause deviations in overseas contracts.**

See 201.403(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

17. Subpart 225.11 is added to read as follows:

## Subpart 225.11—Solicitation Provisions and Contract Clauses

Sec.
225.1101 Acquisition of supplies.
225.1103 Other provisions and clauses.

**225.1101 Acquisition of supplies.**

(1) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act—Balance of Payments Program Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Balance of Payments Program—Supplies, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under appropriations and authorization act restrictions (see subpart 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see subpart 225.71); and

(C) End products restricted under the authority of FAR 6.302–3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restriction in paragraph (2)(ii)(A) or (B) of this section.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(iii) 252.225–7021, Trade Agreements.

(iv) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program.

(4) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225–8, Duty-Free Entry. Use the provision with its Alternate I when the clause at 252.225–7021, Trade Agreements, is used.

(5) Use the provision at 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, instead of the

provision at FAR 52.225–6, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(6) Except as provided in paragraph (11) of this section, use the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–5, Trade Agreements. The clause need not be used where purchase from foreign sources is restricted (see 225.401(b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(7) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225–8, Duty-Free Entry.

(8) Use the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for supplies for exclusive use outside the United States.

(9) Use the clause at 252.225–7010, Duty-Free Entry—Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225–8, Duty-Free Entry.

(10) Use the provision at 252.225–7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7021, Trade Agreements.

(11) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, when acquiring information technology products in Federal Supply Group 70 or 74.

(12) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7036, Buy American Act-North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(i) Use the basic provision when the basic clause at 252.225–7036 is used.

(ii) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(13) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.401 (b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(i)(A) Use the clause in all solicitations and contracts for the items listed at 225.401–70, when the estimated value is $53,150 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(B) Use the clause with its Alternate I when the estimated value is between $25,000 and $53,150.

(ii) Application of the procedures in 225.402 and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the Schedule those items covered by the Act.

(14) Use the clause at 252.225–7037, Duty-Free Entry—Eligible End Products, in solicitations and contracts for supplies and services when the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, is used.

**225.1103 Other provisions and clauses.**

(1) In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225–7005, Identification of Expenditures in the United States, in all negotiated contracts over $25,000 where—

(i) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(A) The contractor is a foreign concern; or

(B) The contractor is a domestic concern and the Government will take title outside the United States.

(ii) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(A) The contractor is a domestic concern; or

(B) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

(2) Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Use the clause at 252.225–7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

## PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

18. Section 242.302 is amended by revising paragraph (a)(19) to read as follows:

**242.302 Contract administration functions.**

(a) * * *

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (c) of the clause at FAR 52.225–8, Duty-Free Entry.

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.225–7000 [Amended]**

19. Section 252.225–7000 is amended in the introductory text by removing ''225.109(a)'' and adding in its place ''225.1101(1)''.

**225.225–7001 [Amended]**

20. Section 252.225–7001 is amended in the introductory text by removing ''225.109(d)'' and adding in its place ''225.1101(2)''.

**252.225–7002 [Amended]**

21. Section 252.225–7002 is amended in the introductory text by removing ''225.109–70(a)'' and adding in its place ''225.1101(3)''.

**252.225–7003 [Amended]**

22. Section 252.225–7003 is amended in the introductory text by removing ''225.605–70(d)'' and adding in its place ''225.1101(4)''; and in Alternate I introductory text by removing ''225.605–70(d)'' and adding in its place ''225.1101(4)''.

**252.225–7005 [Amended]**

23. Section 252.225–7005 is amended in the introductory text by removing ''225.305–70'' and adding in its place ''225.1103(1)''.

**252.225–7006 [Amended]**

24. Section 252.225–7006 is amended in the introductory text by removing

''225.408(a)(i)'' and adding in its place ''225.1101(5)''.

**252.225–7007 [Amended]**

25. Section 252.225–7007 is amended in the introductory text by removing ''225.408(a)(ii)'' and adding in its place ''225.1101(6)''.

**252.225–7008 [Amended]**

26. Section 252.225–7008 is amended in the introductory text by removing ''225.605–70(e)'' and adding in its place ''225.1101(7)''.

**252.225–7009 [Amended]**

27. Section 252.225–7009 is amended in the introductory text by removing ''225.605–70(a)'' and adding in its place ''225.1101(8)''.

**252.225–7010 [Amended]**

28. Section 252.225–7010 is amended in the introductory text by removing ''225.605–70(c)'' and adding in its place ''225.1101(9)''.

**252.225–7020 [Amended]**

29. Section 252.225–7020 is amended in the introductory text by removing ''225.408(a)(iii)'' and adding in its place ''225.1101(10)''.

**252.225–7021 [Amended]**

30. Section 252.225–7021 is amended in the introductory text by removing ''225.408(a)(iv)'' and adding in its place ''225.1101(11)''.

**252.225–7035 [Amended]**

31. Section 252.225–7035 is amended in the introductory text by removing ''225.408(a)(v)'' and adding in its place ''225.1101(12)''; and in Alternate I by removing ''225.408(a)(v)(B)(*2*)'' and adding in its place ''225.1101(12)(ii)''.

**252.225–7036 [Amended]**

32. Section 252.225–7036 is amended in the introductory text by removing ''225.408(a)(vi)'' and adding in its place ''225.1101(13)''; and in Alternate I introductory text by removing ''225.408(a)(vi)(B)(*2*)'' and adding in its place ''225.1101(13)(i)(B)''.

**252.225–7037 [Amended]**

33. Section 252.225–7037 is amended in the introductory text by removing ''225.605–70(b)'' and adding in its place ''225.1101(14)''.

**252.225–7041 [Amended]**

34. Section 252.225–7041 is amended in the introductory text by removing ''225.971'' and adding in its place ''225.1103(2)''.

**252.225–7042 [Amended]**

35. Section 252.225–7042 is amended in the introductory text by removing ''225.97'' and adding in its place ''225.1103(3)''.

[FR Doc. 00–9087 Filed 4–12–00; 8:45 am]
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## DEPARTMENT OF DEFENSE

## 48 CFR Part 226

**[DFARS Case 99–D300]**

## Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

**AGENCY:** Department of Defense (DoD).
**ACTION:** Final rule

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise procedures pertaining to the Indian Incentive Program. The Program provides for incentive payments to Government contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors. This rule reflects new statutory provisions that permit small business concerns to participate in the Indian Incentive Program.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0262; telefax (703) 602–0350. Please cite DFARS Case 99–D300.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The rule revises DFARS Subpart 226.1 to update procedures pertaining to the Indian Incentive Program. Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) established the Indian Incentive Program, which provides for payment of incentives to Government contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors. Prior to fiscal year 1999, annual appropriations acts restricted DoD payments under the Program to those contractors that submitted small business subcontracting plans pursuant to 15 U.S.C. 637(d) or Section 854 of Public Law 101–89 (15 U.S.C. 637 note). Since small business concerns are not required to submit subcontracting plans, small businesses were excluded from participation in the Indian Incentive Program under DoD contracts. Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105–262) and Section 8024 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106–79) eliminated the requirements for a DoD contractor to submit a subcontracting plan before it may participate in the Indian Incentive Program.

DoD implements the Indian Incentive Program through use of the clause at Federal Acquisition Regulation (FAR) 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises. The FAR and DFARS previously prescribed use of the clause in only those DoD contracts that contain subcontracting plan requirements. On October 26, 1999, a proposed FAR rule was published at 64 FR 57964 to remove the FAR requirements for DoD use of the clause; these DFARS amendments replace the FAR requirements.

DoD published a proposed rule at 64 FR 63003 on November 18, 1999. Thirty-six sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule. The final rule differs from the proposed rule in that it lowers the dollar threshold for us of the clause at FAR 52.226–1, to provide increased opportunity or small business concerns to participate in the Indian Incentive Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD expects this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. A final regulatory flexibility analysis has been prepared and its summarized as follows:

The legal basis for the rule is Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544); Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105–262); and Section 8024 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106–79). This rule will apply to all DoD contractors that have the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, incorporated into their contracts. The proposed rule required use of the clause at FAR 52.226–1 in construction contracts valued at $1,000,000 or more, and in other than construction contracts valued

at $500,000 or more, except those awarded using FAR Part 12 (Commercial Item) procedures. As a result of public comments received, and to provide increased opportunity for small business concerns to participate in the Indian Incentive Program, the final rule lowers the dollars threshold for use of the clause to the simplified acquisition threshold ($100,000), for all contracts except those awarded using FAR Part 12 procedures. The rule does not impose any new reporting, recordkeeping, or other compliance requirements, and does not duplicate, overlap, or conflict with any other Federal rules. The rule is expected to have a beneficial effect on small business concerns, because small businesses are now eligible to receive incentive payments for the use of Indian organizations and Indian-owned economic enterprises as subcontractors.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impors any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 226**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 226 is amended as follows:

1. The authority citation for 48 CFR part 226 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Sections 226.103 and 226.104 are revised to read as follows:

**226.103 Procedures.**

(f) The contracting officer must submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD (AT&L) SADBU, 1777 North Kent Street, Suite 9100, Arlington, VA 22209. Upon receipt of funding from OUSD (AT&L) SADBU, the contracting officer must issue a contract modification to add the Indian incentive funding for payment of the contractor's request for adjustment as described at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

**226.104 Contract Clause.**

Use the following prescription instead of the prescription at FAR 26.104(a):

(a) Use the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that—

(1) Do not use FAR part 12 procedures; and

(2) Are for supplies or services expected to exceed the simplified acquisition threshold.

[FR Doc. 00–9084 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 235

**[DFARS Case 99–D302]**

### Defense Federal Acquisition Regulation Supplement; Manufacturing Technology Program

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 216 of the National Defense Authorization Act for Fiscal Year 2000. Section 216 amends statutory provisions pertaining to cost-sharing requirements for contracts under the Manufacturing Technology Program.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan L. Schneider, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 99–D302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD published an interim rule at 65 FR 2057 on January 13, 2000. The rule revised DFARS 235.006–70 to implement Section 216 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). Section 216 amended 10 U.S.C. 2525 to eliminate the mandatory cost-sharing requirements for contracts under the Manufacturing Technology Program, and to require that cost sharing be included as a factor in competitive procedures for evaluating proposals under manufacturing technology projects. DoD received no public comments on the interim rule by the date specified for receipt of comments. The interim rule is converted to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because DoD awards approximately only 20 new contracts under the Manufacturing Technology Program each year.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 235**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

**Interim Rule Adopted as Final Without Change**

Accordingly, the interim rule amending 48 CFR Part 235, which was published at 65 FR 2057 on January 13, 2000, is adopted as a final rule without change.

[FR Doc. 00–9085 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 252

**[DFARS Case 2000–D006]**

### Defense Federal Acquisition Regulation Supplement; Caribbean Basin Countries

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin Country end products a eligible products under the Trade Agreements Act, except for end products from the Dominican Republic and Honduras.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 2000–D006.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The USTR published a notice of 65 FR 9038 on February 23, 2000, to renew the treatment of Caribbean Basin Country end products as eligible products under the Trade Agreements Act, except for end products from the Dominican Republic and Honduras. The clauses at DFARS 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program, and 252.225–7021, Trade Agreements, list the Caribbean Basin countries whose products are eligible products under the Trade Agreements Act. This final rule amends the clauses to remove the Dominican Republic and Honduras from the list, in accordance with the USTR determination.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D006.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 252 is amended as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.225–7007 [Amended]**

2. Section 252.225–7007 is amended by revising the clause date to read ''(APR 2000)''; and in paragraph (a)(1) by removing ''Dominican Republic'' and ''Honduras''.

**252.225–7021 [Amended]**

3. Section 252.225–7021 is amended by revising the clause date to read ''(APR 2000)''; and in paragraph (a)(1) by removing ''Dominican Republic'' and ''Honduras''.

[FR Doc. 00–9086 Filed 4–12–00; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[I.D. 033100D]**

## Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

**ACTION:** Retention limit adjustment.

**SUMMARY:** NMFS extends the expiration date of the current daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT), which published on December 16, 1999. The current daily retention limit per vessel in all areas of one large school or small medium BFT (measuring 47 to less than 73 inches, 119 to less than 185 cm, curved fork length) is extended from May 31, 2000, through June 22, 2000. In addition, NMFS is making subsequent adjustments to the daily retention limit, as noted in the **DATES** section of this document. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of this category.

**DATES:** The expiration date of the current daily retention limit in all areas of one large school or small medium BFT (published on December 16, 1999, at 64 FR 70198) is extended from May 31, 2000, through June 22, 2000.

Effective June 23 through July 30, 2000, the daily retention limit in all areas is adjusted to two school BFT and one large school or small medium BFT.

Effective July 31, 2000, the daily retention limit in all areas is adjusted to one large school or small medium BFT until May 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, (978) 281–9146.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or the per boat limit to a per angler limit.

NMFS is responsible for implementing a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to limit the catch of school BFT to no more than 8 percent by weight of the total domestic landings quota over each 4–consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The recent ICCAT recommendation allows NMFS more flexibility to make interannual adjustments for overharvests and underharvests, provided that the 8–percent landings limit is met over the applicable 4–consecutive-year period. This approach provides NMFS with the flexibility to enhance fishing opportunities and the collection of information on a broad range of BFT size classes and responds to requests from the recreational fishing community for more advance notice of retention limit adjustments and greater certainty in planning for the fishing season.

In the last few years, NMFS has received comment from mid-Atlantic fishermen that the implementation of an increased daily retention limit over a date-certain period is preferable to a longer season with a lower daily retention limit as it facilitates the scheduling of fishing trips, particularly charter trips. In 1999, NMFS increased the daily retention limit to two school BFT and one large school or small medium BFT per vessel for the periods

June 25 through July 25 and September 1 through October 6. Comments from Angling category participants regarding the 1999 fishing season have been positive, and NMFS intends to provide advanced notice regarding daily retention limits again for the 2000 fishing year. Since October 6, 1999, NMFS has maintained the daily retention limit at one large school or small medium BFT per vessel. Because the current daily retention limit is valid only through the end of the 1999 fishing year, i.e., May 31, 2000 (64 FR 70198, December 16, 1999), NMFS must announce a daily retention limit adjustment effective June 1, 2000, even though NMFS does not intend to increase the retention limit from the current limit until late June 2000.

Therefore, beginning June 1, 2000, NMFS adjusts the BFT Angling category daily retention limit for all areas to one large school or small medium BFT per vessel, effectively maintaining the current retention limit through June 22, 2000. Effective June 23 through July 30, 2000, NMFS adjusts the daily retention limit for all areas to two school BFT and one large school or small medium BFT per vessel. After July 30, 2000, the daily retention limit for all areas will be one large school or small medium BFT per vessel. NMFS intends to adjust the daily retention limit again during late summer and early fall season when BFT have moved further north to the waters off Rhode Island, New York, and northern New Jersey, provided that BFT Angling category quota remains available.

NMFS selected the daily retention limit and the duration of the daily retention limit adjustment after examining past catch and effort rates. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, will be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via phone: (888) 872–8862; or the Internet (www.nmfspermits.com); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

In addition, anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging, and, if the BFT was previously tagged, the information on the previous tag (50 CFR 635.26).

## Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 6, 2000.

**Gary C. Matlock,**

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

[FR Doc. 00–9123 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 72
Thursday, April 13, 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.

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1605

### Correction of Administrative Errors

**AGENCY:** Federal Retirement Thrift Investment Board.

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

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend its regulations on Correction of Administrative Errors to change the period of time for submission of claims for the correction of errors in a participant's Thrift Savings Plan (TSP) account. As presently written, certain sections of the regulations impose conflicting duties upon participants to file claims for correction of errors in their TSP accounts within one year of receipt of notice of an error, and also upon employing agencies or the Board to correct an error without regard to when the error is discovered. The amended regulation resolves this conflict by specifying when errors must be corrected by the employing agency, the Board, or the TSP record keeper, as the case may be, and when they may be corrected in the sound discretion of these parties.

In addition, the amended regulation provides that lost earnings in back pay cases involving separations from service will be calculated based upon the G Fund rates of return, as the regulation presently provides, or as otherwise ordered by the court or other tribunal with jurisdiction over the back pay case.

**DATES:** Comments must be received on or before May 15, 2000.

**ADDRESSES:** Comments may be sent to Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

**FOR FURTHER INFORMATION CONTACT:** Merritt A. Willing on (202) 942–1666 or Patrick J. Forrest on (202) 942–1659, FAX (202) 942–1676.

**SUPPLEMENTARY INFORMATION:** The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, similar to a cash or deferred arrangement established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

On December 27, 1996, and May 1, 1998, the Board published final rules in the **Federal Register** concerning the correction of administrative errors (61 FR 67472 and 63 FR 24380). These rules were codified at 5 CFR part 1605. The final rules explain how employing agencies, the TSP record keeper, and the Board identify and correct administrative errors in TSP contributions or account balances. The proposed rule amends these rules.

The Board proposes to change the method of calculation of lost earnings for makeup contributions from certain back pay awards involving separations from service. Currently, § 1605.4(a)(3) describes a process for determining lost earnings based upon the rates of return for the G Fund. The rule does not take into account the circumstances of individual cases that are brought before and considered by the court or other tribunal with jurisdiction over the back pay case. Thus, the amendment provides that the TSP will use the G Fund rate, unless otherwise ordered by the court or other tribunal with jurisdiction over the case.

Section 1605.6 describes procedures for participants filing claims against employing agencies. Section 1605.8 describes a similar process for claims against the Board or TSP record keeper. Currently, paragraph (b) of § 1605.6 provides that, if an agency has not voluntarily corrected an administrative error, a participant must file a claim for correction within one year of receipt of the earliest of several forms of notice of the error. At the same time, the regulation requires agencies to ''promptly correct'' errors ''upon discovery.'' Thus, a conflict exists between a participant's obligation to file a timely claim for correction and an agency's obligation to correct administrative errors ''upon discovery,'' which may occur after the participant's right to file a claim has expired. A similar conflict exists in § 1605.8(c) with respect to claims for correction of Board or TSP record keeper errors. Although it has been the Board's experience that errors are almost always corrected upon discovery, the Board recognizes that this conflict should be eliminated to the extent possible.

The amended regulation imposes different obligations on employing agencies, the Board, and the TSP record keeper to correct errors depending upon the length of time that has passed between the error and its discovery. Certain types of errors must be corrected if they are discovered within six months. For agencies, these errors concern the amount and timely remittance of contributions. For the Board and TSP record keeper, these errors concern elections to withdraw a TSP account and the distribution of death benefits. If such errors are discovered more than six months after their occurrence, the agency, Board, or TSP record keeper may exercise its sound discretion in deciding whether to correct them. (It is assumed that none of the foregoing errors are first discovered by a participant.)

For such errors that are discovered by participants, the amendment permits them to file claims against their employing agencies, the Board, or the TSP record keeper without limitation as to time. If the claim is filed within six months of the error, the error must be corrected; otherwise, the agency, Board, or record keeper may use its sound discretion in deciding whether to do so. (Although a participant is not limited as to time in filing a claim for this type of error, the agency, Board, or record keeper, in deciding the claim, may consider the length of time that has passed since the participant first knew, or should have known, of the error.)

For any other type of error (except a retirement system misclassification error, discussed below), the agency, Board, or TSP record keeper, as the case may be, must correct the error if it is discovered within 30 days of the issuance of the most recent TSP participant statement or transaction confirmation that reflects the error; if it is discovered after that time, they may use their sound discretion in deciding whether to do so. (Participant statements will be issued in May and

September during 2000; thereafter, participant statements will be issued in January, April, July, and October of every year.)

For such errors discovered by participants, claims must be filed with the participant's employing agency, the Board, or the TSP record keeper within 30 days of the participant's receiving notice of the error in the TSP participant statement or transaction confirmation. For timely filed claims, the errors must be corrected. For untimely filed claims, however, the agency, Board or TSP record keeper may use its sound discretion in deciding whether to do so. While participants are therefore required to be diligent in discovering errors in their accounts, the Board considers this to be reasonable, particularly in the daily transaction environment forthcoming on October 1, 2000.

There is one type of error for which participants will not be able to receive correction after October 1, 2000, if they have not filed a timely claim. As amended, §§ 1605.6 and 1605.8 provide that no contribution allocation errors occurring before October 1, 2000, may be corrected if the participant does not bring the error to the attention of his or her agency (or the Board or the TSP record keeper, as the case may be) within the relevant 30-day period. The Board will implement a new record keeping system on October 1, 2000, and, inasmuch as pre-conversion contribution allocation errors will be extremely difficult to correct, the Board must insist on compliance with the 30-day limit.

Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

Finally, current § 1605.8(b) is amended by deleting that portion which describes internal processes between the Board and TSP record keeper and by clarifying the effect of a participant's failure to request Board review of a decision of the TSP record keeper in a timely manner.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

**Paperwork Reduction Act**

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

**Unfunded Mandates Reform Act of 1995**

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

**List of Subjects in 5 CFR Part 1605**

Claims, Employment benefit plans, Government employees, Pensions, Retirement.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set out in the preamble, 5 CFR Part 1605 is proposed to be amended as set forth below:

## PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for part 1605 continues to read as follows:

**Authority:** 5 U.S.C. 8351 and 8474.

**§ 1605.4 [Amended]**

2. Section 1605.4 is amended by adding after the word ''account'' at the end of paragraph (a)(3) the words ''unless otherwise ordered by the court or other tribunal with jurisdiction over the participant's back pay case''.

3. Section 1605.6 is revised to read as follows:

**§ 1605.6 Procedures for claims against employing agencies; time limitations.**

(a) *Agency's discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of contributions to the TSP (other than a retirement system misclassification error, described in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) For any other type of error (other than a retirement system misclassification error, described in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative if it is discovered before 30 days after the issuance of the most recent TSP participant statement that reflected (or would reflect) the error. If it is discovered after that time, the employing agency may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of contributions to the TSP, the participant may file a claim for correction thereof with his or her employing agency without limitation of time. The agency must promptly correct any such error for which the participant filed a claim within six months of its occurrence; the correction of any such error for which the participant filed a claim after that time is in the agency's sound discretion.

(2) For any other type of error of which a participant has knowledge (other than a retirement system misclassification error, described in paragraph (c) of this section), the participant may file a claim for correction thereof with his or her employing agency no later than 30 days after the participant receives a TSP participant statement reflecting the error. The agency must promptly correct such errors.

(3) If a participant fails to file a claim for correction of an error described in paragraph (b)(2) of this section in a timely manner, the agency may, in its sound discretion, correct any such error that is brought to its attention; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(c) *Retirement system misclassification error.* Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

(d) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each employing agency's procedures must include the following:

(1) The employing agency must provide the participant with a decision on any claim within 30 days of its receipt, unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. A decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial, citations to any applicable

statutes, regulations, or procedures, a description of any additional material that would enable the participant to perfect the claim, and a statement of the steps necessary to appeal the denial.

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of a claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim.

(3) The employing agency must issue a written decision on a timely appeal within 30 days of receipt of the appeal, unless the employing agency provides the participant with good cause for requiring a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures.

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedies and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

4. Section 1605.8 is revised to read as follows:

**§ 1605.8 Claims for correction of Board or TSP record keeper errors; time limitations.**

(a) *Filing claims.* Claims for correction of Board or TSP record keeper errors under this subpart may be submitted initially either to the TSP record keeper or the Board. The claim must be in writing and may be from the affected participant or beneficiary.

(b) *Board's or TSP record keeper's discovery of error.* (1) Upon discovery of an error made within the past six months involving the withdrawal of an account, the change of a withdrawal election, or the distribution of a death benefit, the Board or TSP record keeper must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the Board or TSP record keeper may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so.

(2) For any other type of error, the Board or TSP record keeper must promptly correct the error if it is discovered before 30 days after the issuance of the earlier of the most recent TSP participant statement or transaction confirmation that reflected (or would reflect) the error. If it is discovered after that time, the Board or TSP record keeper may use its sound discretion in deciding whether to correct it, but, in any event, must act promptly in doing so; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(c) *Participant's or beneficiary's discovery of error.* (1) If the Board or TSP record keeper fails to discover an error of which a participant or beneficiary has knowledge involving the withdrawal of an account, the change of a withdrawal election, or the distribution of a death benefit, the participant or beneficiary may file a claim for correction thereof with the Board or TSP record keeper without limitation of time. The Board or TSP record keeper must promptly correct any such error for which the participant or beneficiary filed a claim within six months of its occurrence; the correction of any such error for which the participant or beneficiary filed a claim after that time is in the sound discretion of the Board or TSP record keeper.

(2) For any other type of error of which a participant or beneficiary has knowledge, he or she may file a claim for correction thereof with the Board or TSP record keeper no later than 30 days after receipt of the earlier of a TSP participant statement or transaction confirmation reflecting the error. The Board or TSP record keeper must promptly correct such errors.

(3) If a participant or beneficiary fails to file a claim for correction of an error described in paragraph (c)(2) of this section in a timely manner, the Board or TSP record keeper may nevertheless, in its sound discretion, correct any such error that is brought to its attention; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(d) *Processing claims.* (1) If the initial claim is submitted to the TSP record keeper, the TSP record keeper may either respond directly to the claimant, or may forward the claim to the Board for response. If the TSP record keeper responds to a claim, and all or any part of the claim is denied, the claimant may request review by the Board within 90 days of the date of the record keeper's response.

(2) If the Board denies all or any part of a claim (whether upon review of a TSP record keeper denial or upon an initial review by the Board), the claimant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the claimant does not submit a request to the Board for review of a claim denial by the TSP record keeper within the 90 days permitted under paragraph (d)(1) of this section, the claimant shall be deemed to have accepted the TSP record keeper's decision.

[FR Doc. 00–9088 Filed 4–12–00; 8:45 am]

BILLING CODE 6760–01–U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IL190–1b; FRL–6574–2]**

### Approval and Promulgation of Air Quality Implementation Plans; Illinois; Approval of a Site-Specific Sulfur Dioxide Plan; Revision for CILCO Edwards Station

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a May 21, 1999, site-specific sulfur dioxide ($SO_2$) SIP revision request for the Central Illinois Light Company's Edwards Generating Station in Peoria County, Illinois. Illinois' requested SIP revision provides for a temporary relaxation in the fuel quality limit for one of the facility's three boilers, but adds an overall daily sulfur dioxide emission cap for the three boilers. The SIP revision request included dispersion modeling results which indicated that the revision will not cause violations of the $SO_2$ standards. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity

will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received on or before May 15, 2000.

**ADDRESSES:** All comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.

Copies of the State submittal and other relevant documents used in support of this action are available at the following address for inspection during normal business hours: U.S. Environmental Protection Agency, Region 5, Air Programs Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604.

**FOR FURTHER INFORMATION CONTACT:** Mary Portanova, EPA Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5954.

**SUPPLEMENTARY INFORMATION:** For further information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: March 28, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

[FR Doc. 00–8953 Filed 4–12–00; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FL–83–200009; FRL–6578–4]**

### Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan; Extension of Comment Period

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

**ACTION:** Proposed rule; extension of the comment period.

**SUMMARY:** EPA is extending the comment period for a proposed rule published March 17, 2000 (65 FR 14506). On March 17, 2000, EPA proposed an approval of revisions to the Florida State Implementation Plan concerning revisions to the ozone air quality maintenance plans for the Jacksonville (Duval County) and Southeast Florida (Broward, Dade, and Palm Beach Counties) areas to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program from the future year emission projections contained in those plans. In response to requests from the American Lung Association of Florida, Inc., Environmental Defense, and David B. Rivkin, Jr. as counsel for Environmental Systems Products, Inc., EPA is extending the comment period for 30 days.

**DATES:** The comment period is extended until May 17, 2000.

**ADDRESSES:** Comments should be submitted to: Joey Levasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Joey Levasseur at 404/562–9035 (E-mail: *levasseur.joey@epa.gov).*

Dated: April 7, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 00–9235 Filed 4–12–00; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF DEFENSE

### 48 CFR Part 204

**[DFARS Case 2000–D002]**

### Defense Federal Acquisition Regulation Supplement; Closeout of Foreign Military Sales Contract Line Items

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** The Acting Director of Defense Procurement is proposing to amend Defense Federal Acquisition Regulation Supplement (DFARS) policy pertaining to closeout of contract files. The amendments would expedite the closeout of Foreign Military Sales (FMS) contract line items, under contracts that contain both FMS and non-FMS items, by permitting closeout of the FMS line items as soon as the closeout requirements for those line items are satisfied.

**DATES:** Comments on the proposed rule should be submitted in writing to the address specified below on or before June 12, 2000, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulation Council, Attn: Ms. Melissa Rider, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 2000–D002 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D002 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, (703) 602–4245.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

This proposed rule amends the contract closeout policy at DFARS 204.804 to specify that, if a contract includes FMS contract line items and non-FMS contract line items, the FMS line items should be closeout as soon as the closeout requirements for those line items are satisfied. This change is proposed as part of a DoD initiative to improve the FMS process.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule only affects the timing of the administrative matter of closing out contract line items. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D002.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Part 204

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 204 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 204 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 204—ADMINISTRATIVE MATTERS

2. Section 204.804 is amended by revising the introductory text to read as follows:

### 204.804 Closeout of contract files.

Normally, the closeout date for contract files is the date in Block 9d on the DD Form 1594, Contract Completion Statement, or in columns 59–65 on the PK9. However, if the contract includes Foreign Military Sales (FMS) contact line items and non-FMS contract line items, the FMS contract line items should be closed out as soon as the closeout requirements for those line items are satisfied in accordance with FAR 4.804. If the contracting office must do a major closeout action that will take longer than 3 months after the date shown in Block 9d of the DD Form 1594, or in columns 59–65 of the PK9–

* * * * *

[FR Doc. 00–9083 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 204 and 252

**[DFARS Case 99–D015]**

## Defense Federal Acquisition Regulation Supplement; Disclosure of Information

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** DoD is withdrawing the proposed rule published at 64 FR 56724 on October 21, 1999. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) pertaining to contractor release of sensitive, unclassified contract information. DoD is planning to revise DoD Regulation 5200.1–R, Information Security Program, including the policy pertaining to sensitive infroamtion. DoD will reexamine the need for DFARs amendments on this subject when the revision of DOD Regulation 5200.1–R is complete.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D015.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 00–9082 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

# Notices

**Federal Register**

Vol. 65, No. 72

Thursday, April 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the subject Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR, part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.''

**DATES:** Comments on this notice must be received by June 12, 2000, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Ave. SW., Washington, DC 20250–0523, telephone (202) 690–4012. Electronic mail: phillip__elder@wdc.fsa.usda.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR, Part 1951, Subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.

*OMB Number:* 0575–0093.

*Expiration Date of Approval:* June 30, 2000.

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

*Abstract:* Section 333 of the Consolidated Farm and Rural Development Act (Con Act) (7 U.S.C. 1983) and § 502 of the Housing Act of 1949 (42 U.S.C. 1472) require the Agencies to ''graduate'' their direct loan borrowers to other credit when they are able to do so. Graduation is required because Government loans are not meant to be extended beyond a borrower's need for subsidized rates or government credit. The borrower must refinance their direct Government loan when other credit becomes available at reasonable rates and terms. If other credit is not available the Agency will continue to review the borrower for possible graduation at periodic intervals. Also, § 333A(f) of the Con Act (7 U.S.C. 1983a (f)) requires the Agency to provide a financial prospectus to lenders who may be interested in providing credit to Farm Service Agency direct farm loan borrowers with an FSA guarantee. The information collected to carry out these statutory mandates is financial data such as amount of income, farm operating expenses, asset values, and liabilities. This information collection is submitted by the Agencies' borrowers to Agency offices and is used in the Agencies' efforts to graduate direct borrowers to private credit.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 3 hours per response.

*Respondents:* Individuals or households, businesses or other for profit and farms.

*Estimated Number of Respondents:* 17,031.

*Estimated Number of Responses per Respondent:* 1.47.

*Estimated Number of Responses:* 25,047.

*Estimated Total Annual Burden on Respondents:* 75,361 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0045.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the subject Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. 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: April 3, 2000.

**Jill Long Thompson,**

*Undersecretary for Rural Development.*

**August Schumacher, Jr.,**

*Undersecretary for Farm And Foreign Agricultural Services.*

[FR Doc. 00–9174 Filed 4–12–00; 8:45 am]

**BILLING CODE 3410–XV–U**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Correction; Information Collection; FS–1800–3, Youth Conservation Corps Employment

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice corrects the estimate of burden for the second part of the request for reinstatement of the information collection, Youth Conservation Corps Employment. FS–1800–3 Youth Conservation Corps (YCC) Medical History, was the second part of this information collection, which was published in the **Federal Register** on February 10, 2000 (65 FR 6579), with a request for comment deadline of April 10, 2000. After further discussion with the Department of Interior, National Park Service, and Fish and Wildlife Service, the Forest Service determined that the number of respondents who will have to complete the Medical History form will be less than the number stated in the published notice. Only youths who will be hired will be required to complete FS–1800–

3. Youths who apply for a position with the Youth Conservation Corps, but who will not be hired will not have to complete this Medical History form.

**FOR FURTHER INFORMATION CONTACT:** Ransom Hughes, Youth Conservation Corps, Senior, Youth and Volunteer Programs, at (703) 605–4854.

**Description of Information Collection**

*Title:* FS–1800–3 Youth Conservation Corps (YCC) Medical History.

*OMB Number:* 0596–0084.

*Expiration Date of Approval:* October 31, 1997.

*Estimate of Annual Burden:* 14 minutes.

*Type of Respondents:* Youth 15 to 18 years of age.

*Estimated Annual Number of Respondents:* 2,000 (corrected from 18,000).

*Estimated Annual Number of Responses per Respondent:* 1.

Estimated Total Annual Burden on Respondents: 140 hours (corrected from 4,200 hours).

Dated: April 5, 2000.

**Clyde Thompson,**

*Deputy Chief for Business Operations.*

[FR Doc. 00–9209 Filed 4–12–00; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Utah Northern Goshawk Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Decision on the Utah Northern Goshawk Project Environmental Assessment.

**SUMMARY:** In the November 9, 1999, **Federal Register** (Vol. 64, No. 216, pages 61062–61063), notice was given by the Intermountain Region of the Forest Service that the Environmental Assessment for the Utah Northern Goshawk project was available for review and comment for 60 days.

On March 14, 2000, Regional Forester Jack A. Blackwell made his decision to implement Alternative F as the management direction to maintain and restore habitat for the northern goshawk on the National Forests in Utah. This decision amends the goals, objectives, standards, guidelines and monitoring requirements established in the current land and resource management plans (forest plans) for the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, and Wasatch-Cache National Forests. The amendments will be in effect until the forest plans are revised.

The decision may be appealed in accordance with the provisions of 36 CFR 217, as identified in the Decision Notice. The appeal period ends on May 22, 2000. Copies of the Decision Notice are available for calling 801/615–5897 or from the Utah Northern Goshawk Project's website at: www.fs.fed.us/r4/goshawk.

**FOR FURTHER INFORMATION CONTACT:** Questions about the Decision Notice should be directed to Peter W. Karp, Uinta National Forest Supervisor and Team Leader for the Utah Northern Goshawk Project, USDA Forest Service, PO Box 1428, Provo, UT 84601. Phone: 801/342–5100.

Dated: April 3, 2000.

**Jack G. Troyer,**

*Deputy Regional Forester, Intermountain Region.*

[FR Doc. 00–9245 Filed 4–12–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

**[Docket No. 000327082–0082–01]**

**RIN 0605–XX07**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Commerce.

**ACTION:** Notice of amendment of Privacy Act System of Records: Commerce/Patent and Trademark System 1; Commerce—Patent and Trademark System 2; Commerce/Patent and Trademark System 5.

**SUMMARY:** The Department of Commerce is amending the systems of records listed under Commerce—Patent and Trademark Systems 1: Attorneys and Agents Registered to Practice before the Patent and Trademark Office; Commerce-Patent and Trademark Systems 2: Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents; and Commerce-Patent and Trademark Systems 5: Non-Registered Persons Rendering Assistance to Patent Applicants. This action has been taken to update the Privacy Act notice and to amend the routine use. We invite public comment on the proposed routine use in this publication.

**DATES:** *Effective Date:* The amendments will become effective as proposed without further notice on May 15, 2000 unless comments dictate otherwise.

*Comment Date:* To be considered, written comments must be submitted on or before May 15, 2000.

**ADDRESSES:** Comments may be sent via United States Mail delivery to Raymond Chen, Office of the Solicitor, United States Patent and Trademark Office, Box 8, Washington, DC 20231; via facsimile at 703–305–9373. All comments received will be available for public inspection at the Public Search Facilities, Crystal Plaza 3, 2021 South Clark Place, Arlington, VA 22202.

For further information contact: Raymond Chen, Office of the Solicitor, Box 8, Washington, DC 20231, or by phone at 703–305–9035.

**SUPPLEMENTARY INFORMATION:** Pursuant to an executive branch initiative to update the Privacy Act systems of records, the Department of Commerce amends three Privacy Act systems maintained by the U.S. Patent and Trademark Office (PTO) to describe the current practices of the PTO.

In addition to amending the notice of routine uses, other changes are being made to update the notice, including amendments to categories of individuals covered by the system, categories of records in the system, location of records, authority for maintenance of the system, policy and practices for storing records, and the title and business address of the agency official responsible for the records. A more detailed explanation of the changes follows for each system.

The below-referenced Prefatory Statement of General Routine uses is found at 46 FR 63501–63502 (December 31, 1981).

The Department of Commerce finds no probable or potential effect of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, the PTO has located paper records in lockable file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

**Attorneys and Agents Registered To Practice Before the Patent and Trademark Office (PAT–TM–1)**

The system location disclosure is updated to reflect correct addresses and to reflect that records in this system may be contained in the Office of Enrollment and Discipline (OED), the Office of the Solicitor, and/or the Commissioner's Office. This amendment to the system location reflects current practice and does not constitute a new collection of records. Changes in the PTO enrollment and disciplinary rules, part 10 of 37 CFR, instituted in 1985, moved the functions of enrollment and discipline from the Office of the Solicitor to OED, a separate office. Moreover, under current enrollment and disciplinary rules, persons covered by this system

may petition OED decisions to the Commissioner of Patents and Trademarks. Additionally, the Solicitor provides legal advice and guidance on enrollment matters to both the OED and the Commissioner. Thus, records from this system may also be stored in the Commissioner's Office or in the Office of the Solicitor.

The category of records in the system is amended to include records pertaining to investigations of an applicant's suitability or eligibility for registration to practice before the PTO. This amendment to the categories of records in the system reflects current practice as authorized by 35 U.S.C. 31 and does not constitute a new collection of records.

The routine uses of records is amended to clarify the current notice. This amendment to the routine uses of records in the system reflects current practice and does not constitute a new collection of records or any new routine disclosure. The public roster notice in the current system is further defined to indicate that a registered practitioner's name, address, law firm or company affiliation, telephone number, and registration number will be published periodically. Currently, the PTO publishes this roster on its worldwide web site. The current notice is further amended to clarify that the PTO will release current status information (*e.g.,* registered, not registered, suspended, etc.) upon inquiry from the public, state bars, courts, or other government agencies. The amendment also notices that the PTO may disclose information to solicit additional information regarding an applicant's suitability and eligibility to practice before the PTO, and that petitions for reinstatement by a suspended or excluded practitioner will be open to the public, pursuant to 37 CFR 10.160(e).

The storage notice is amended to reflect storage on microfilm and machine readable storage media. The safeguards notice is amended to reflect current practice. This amendment to the storage and safeguarding of records in the system reflects current practice and does not constitute a new collection of records, new storage means, or new safeguarding means. The system manager and notification procedure are amended to update correct addresses for those positions. The record source category is amended to reflect current practice of obtaining information from individuals.

Further, the notice for Privacy Act system ''Attorneys and Agents Registered to Practice before the Patent and Trademark Office'' (PAT–TM–1) has also been amended to add a notice regarding the PTO's intention to exempt that system of records from certain provisions of the Privacy Act as provided for in 5 U.S.C. 552a(k)(2). Some of the records in this system result from investigations compiled for law enforcement purposes. Namely, the records contain information regarding, *inter alia*, the moral and ethical fitness of an applicant to practice before the PTO. This information is relevant (a) to pending disciplinary investigations and proceedings in the PTO (b) to state bar violations, or (c) to violations of state and/or federal criminal and/or civil laws. The rulemaking process is concurrently amending 15 CFR 4b.14(b)(2) to add PAT–TM–1 to the systems of records which are exempt from certain provision of the Privacy Act under 5 U.S.C. 552a(k)(2).

The reasons set forth at 15 CFR 4b.14(b)(2) for exempting certain systems of records from certain provisions of the Privacy Act are also reasons for exempting PAT–TM–1 under 5 USC 552a(k)(2). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. See 15 CFR 4b.14(b)(2).

**Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents (PAT–TM–2)**

The system location disclosure is updated to reflect correct addresses and to reflect that records in this system may be contained in the Office of Enrollment and Discipline (OED), the Office of the Solicitor, and/or the Commissioner's Office. This amendment to the system location reflects current practice and does not constitute a new collection of records. Changes in the PTO enrollment and disciplinary rules, part 10 of 37 CFR, instituted in 1985, moved the functions of enrollment and discipline from the Office of the Solicitor to OED, a separate office. Under 37 CFR 10.140(b), the Commissioner designates certain associate solicitors to serve as legal counsel for the Director of OED. Thus, records from this system may also be maintained in the Office of the Solicitor. Moreover, under current enrollment and disciplinary rules, persons covered by this system may petition OED decisions to the Commissioner of Patents and Trademarks. Additionally, the Solicitor provides legal advice to the Commissioner on disciplinary matters. Thus, records from this system may be stored in the Commissioner's Office or in the Office of the Solicitor.

The categories of individuals covered by the system is amended to reflect current practice under PTO rules to include attorneys practicing trademark matters before the PTO and any other attorney appearing before the PTO.

The routine uses of records is amended to clarify the current notice. This amendment to the routine uses of records in the system reflects current practice and does not constitute a new collection of records or any new routine disclosure. Under 37 CFR 10.135(b), a notice of institution of a disciplinary complaint and case against an attorney or agent may be publicly disclosed. Additionally, upon a final order reprimanding, suspending, or excluding an attorney or agent, the records in this system may be publicly disclosed.

The storage notice is amended to reflect storage on microfilm and machine readable storage media. The safeguards notice is amended to reflect current practice. This amendment to the storage and safeguarding of records in the system reflects current practice and does not constitute a new collection of records or new storage means or new safeguarding means. The system manager and notification procedure are amended to update correct addresses for those positions. The record source category is amended to reflect the current practice of obtaining information from individuals.

Further, the notice for Privacy Act system Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents (PAT–TM–2) has also been amended to add a notice regarding the agency's intention to exempt that system of records from certain provisions of the Privacy Act as provided for in 5 U.S.C. 552a(k)(2). All or substantially all of the records in PAT–TM–2 comprise investigatory material compiled for law enforcement purposes. Namely, the records are used to aid the agency in enforcing its statutes and regulations regarding the conduct of patent attorneys and agents admitted to practice before the PTO. The rulemaking process is concurrently amending 15 CFR 4b.14(b)(2) to add PAT–TM–2 to the systems of records which are exempt from certain provision of the Privacy Act under 5 U.S.C. 552a(k)(2).

The reasons set forth at 15 CFR 4b.14(b)(2) for exempting certain systems of records from certain

provisions of the Privacy Act are also reasons for exempting PAT–TM–2 under 5 U.S.C. 552a(k)(2). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information, and to avoid endangering these sources and law enforcement personnel. See 15 CFR 4b.14(b)(2).

**Non-Registered Persons Rendering Assistance to Patent Rendering Assistance (PAT–TM–5)**

The system location disclosure is updated to reflect correct addresses and to reflect that records in this system may be contained in the Office of Enrollment and Discipline (OED) and the Office of the Solicitor. This amendment to the system location reflects current practice and does not constitute a new collection of records. Changes in the PTO enrollment and disciplinary rules, part 10 of 37 CFR, instituted in 1985, moved the functions of enrollment and discipline from the Office of the Solicitor to OED, a separate office. Under 37 CFR 10.140(b), the Commissioner appoints certain associate solicitors to serve as legal counsel for the Director of OED. Thus, records from this system may also be maintained in the Office of the Solicitor.

The storage notice is amended to reflect storage on microfilm and machine readable storage media. The safeguards notice is amended to reflect current practice. This amendment to the storage and safeguarding of records in the system reflects current practice and does not constitute a new collection of records or new storage means or new safeguarding means. The system manager and notification procedure are amended to update correct addresses for those positions.

**Classification**

This notice is not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2).

This notice is exempt review under Executive Order 12866.

Accordingly, Privacy Act systems notices for Attorneys and Agents Registered to Practice before the Patent and Trademark Office (PAT–TM–1), Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents (PAT–TM–2), and Non-Registered Persons Rendering Assistance to Patent Rendering Assistance (PAT–TM–5) originally published at 40 FR 32970 (August 5, 1975) are amended as follows:

**COMMERCE/PAT–TM–1**

**SYSTEM NAME:**

Attorneys and Agents Registered to Practice Before the Office—COMMERCE/PAT–TM–1.

**SYSTEM LOCATION:**

Office of Enrollment and Discipline, U.S. Patent and Trademark Office, 2221 South Clark Street, Arlington, Virginia 22202; Office of the Commissioner, 2121 Crystal Dr., Arlington, VA 22202; Office of the Solicitor, 2121 Crystal Drive, Arlington, VA 22202.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Attorneys and agents who are, or have been, registered to practice before the Patent and Trademark Office (''PTO'') in patent cases, and applicants and former applicants for such registration to practice.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Biographical information, personal and professional qualifications, character and fitness report, investigations of an applicant's suitability or eligibility for registration to practice before the PTO, undertakings of former patent examiners, current address, and status information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

35 U.S.C. 1, 6, and 31.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See Prefatory Statement of General Routine uses Nos. 1–5 and 8–13. A public roster including an address of record, law firm or company affiliation, telephone number, and registration number of the registered individuals is published and disseminated; registration status is disseminated upon inquiry; and information may be published or otherwise disclosed to solicit information regarding an applicant's suitability and eligibility for registration to practice before the PTO.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders, microfilm, and machine readable storage media.

**RETRIEVABILITY:**

Filed alphabetically by name or registration number.

**SAFEGUARDS:**

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Records retention and disposal is in accordance with the unit's Records Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231.

**NOTIFICATION PROCEDURE:**

Information may be obtained from Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231. Requester should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: Same address as stated in the notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b.

**RECORD SOURCE CATEGORIES:**

Subject individual, references, and individuals furnishing information.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e) (1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of

information, and to avoid endangering these sources and law enforcement personnel.

**COMMERCE/PAT–TM–2**

**SYSTEM NAME:**

Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents—COMMERCE/PAT–TM–2.

**SYSTEM LOCATION:**

Office of Enrollment and Discipline, U.S. Patent and Trademark Office, 2221 South Clark Street, Arlington, Virginia 22202; Office of the Commissioner, 2121 Crystal Drive, Arlington, VA 22202; Office of the Solicitor, 2121 Crystal Drive, Arlington, VA 22202.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Attorneys and agents registered to practice before the Patent and Trademark Office (PTO) in patent cases, attorneys practicing before the PTO in trademark cases, attorneys appearing before the PTO, and excluded or suspended attorneys and agents.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Complaints and information obtained during investigations and quasi-judicial disciplinary proceedings.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

35 U.S.C. 1, 6, and 32.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See Prefatory Statement of General Routine Uses Nos. 1–5, 8–10, and 13. Dissemination of information concerning the complaint, investigation, or disciplinary proceeding may be made to the complainant and to persons who can reasonably be expected to provide information needed in connection with the complaint, investigation, or disciplinary proceeding. Notice of filing of a disciplinary complaint may be publicly disclosed. Upon a final order reprimanding, suspending, or excluding an attorney or agent, the records in this system may be publicly disclosed.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders, microfilm, and machine readable storage media.

**RETRIEVABILITY:**

Filed alphabetically by name or registration number.

**SAFEGUARDS:**

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Records retention and disposal is in accordance with the unit's Records Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231.

**NOTIFICATION PROCEDURE:**

Information may be obtained from Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231. Requester should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: Same address as stated in the notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b.

**RECORD SOURCE CATEGORIES:**

Subject individuals, clients of same, registered attorneys and agents, witnesses in disciplinary proceedings, court opinions, and individuals furnishing information.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

**COMMERCE/PAT–TM–5**

**SYSTEM NAME:**

Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT–TM–5.

**SYSTEM LOCATION:**

Office of Enrollment and Discipline, U.S. Patent and Trademark Office, 2221 South Clark Street, Arlington, Virginia 22202.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons other than registered attorneys or agents who have offered or rendered, for payment, various services to inventors, patent applicants, and patentees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Declarations of assistance received and other reports or complaints, including names and addresses, of persons rendering services, and information obtained and used for investigatory and law enforcement purposes.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

35 U.S.C. 1, 6, and 33; 5 U.S.C. 301; 28 U.S.C. 533–535; 44 U.S.C. 3101; and E.O. 10450.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Providing notice to patent applicants regarding whether or not the persons from whom assistance was received are registered to practice before the Office. Used for investigative purposes. Also, see Prefatory Statement of General Routine Uses Nos. 1–5, 8–10, and 13.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders, microfilm, and machine readable storage media.

**RETRIEVABILITY:**

Filed alphabetically by name.

**SAFEGUARDS:**

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Records retention and disposal is in accordance with the unit's Records Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231.

**NOTIFICATION PROCEDURE:**

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231. Requester should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department's rules in 15 CFR part 4b.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: Same address as stated in the notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b.

**RECORD SOURCE CATEGORIES:**

Patent applicants who have received and paid for services by the individuals on whom the records are maintained.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

Dated: March 29, 2000.

**Brenda Dolan,**

*Departmental Freedom of Information Act and Privacy Act Officer.*

[FR Doc. 00–8862 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–485–803]**

## Cut-to-Length Carbon Steel Plate From Romania; Time Limits

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 1998–1999 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Romania. This review covers two exporters of the subject merchandise to the United States, Metalexportimport, S.A. and Windmill International Romania Branch (Windmill), and one manufacturer of the subject merchandise, C. S. Sidex, S.A. The period of review is August 1, 1998 through July 31, 1999.

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

**FOR FURTHER INFORMATION CONTACT:** Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** The Department initiated this administrative review on October 1, 1999 (64 FR 53318) and November 4, 1999 (64 FR 60161). Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. Because of the complexity and difficulty presented with surrogate country selection and factor valuation in this case, the Department is extending the time limit for completion of the preliminary results until August 30, 2000. See Memorandum from Richard Weible to Joseph Spetrini, on file in room B–099 of the main Commerce building. The deadline for the final results of this review will continue to be 120 days after the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act and section 351.213(h)(2) of the Department's regulations.

Dated: April 27, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary Enforcement Group III.*

[FR Doc. 00–9239 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–560–810, A–580–843]**

## Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Expandable Polystyrene Resins From Indonesia and the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

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

**FOR FURTHER INFORMATION CONTACT:** Valerie Ellis or David Layton, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2336, or (202) 482–0371, respectively.

### Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of certain expandable polystyrene resins from Indonesia and the Republic of Korea. The deadline for issuing the preliminary determinations in these investigations is now June 20, 2000.

On December 13, 1999, the Department initiated antidumping investigations of certain expandable polystyrene resins from Indonesia and the Republic of Korea. *See Initiation of Antidumping Duty Investigations: Certain Expandable Polystyrene Resins from Indonesia and the Republic of Korea,* 64 FR 71112 (December 20, 1999). The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation (*i.e.,* May 1, 2000).

Pursuant to 19 CFR 351.205(e), on March 29, 2000, the petitioners filed a request that the Department postpone the preliminary determinations in these investigations. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, in accordance with section 733(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department is postponing the

deadline for issuing these preliminary determinations until June 20, 2000.

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: April 5, 2000.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–9241 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–855]**

### Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is conducting an antidumping duty investigation of non-frozen apple juice concentrate from the People's Republic of China. We determine that sales have been made at less than fair value. The estimated dumping margins are shown in the Continuation of Suspension of Liquidation section of this notice.

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

**FOR FURTHER INFORMATION CONTACT:** Craig Matney, Sally Hastings, or Annika O'Hara, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778, 482–3464, or 482–3798, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

#### Case History

Since the preliminary determination (*see* 64 FR 65675 (November 23, 1999) (''*Preliminary Determination*'')), the following events have occurred:

On November 24, 1999, we received an allegation from the respondents in this investigation regarding certain clerical errors in the preliminary determination. On December 27, 1999, we published in the **Federal Register** a notice of our amended preliminary determination, postponement of the final determination, and extension of provisional measures (64 FR 72316).

On January 10, 2000, one of the respondents, Shaanxi Machinery & Equipment Import & Export Corporation (''SAAME''), notified the Department of its withdrawal from the investigation.

In January and February 2000, we conducted verification of the questionnaire responses submitted by the following respondents: Yantai North Andre Juice Co., Ltd. (''North Andre''); Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. (''Haisheng''); Sanmenxia Lakeside Fruit Juice Co., Ltd. (''Lakeside''); Shandong Zhonglu Juice Group Co., Ltd. (''Zhonglu''); Yantai Oriental Juice Co., Ltd. (''Oriental''); and Qingdao Nannan Foods Co., Ltd. (''Nannan''). We issued the verification reports during February and March 2000.

Pursuant to the Department's request, supplemental information regarding surrogate values was submitted on February 25 and 28, 2000, respectively, by the respondents and by Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top Inc. (hereinafter collectively referred to as ''the petitioners'').

The petitioners and the respondents filed case and rebuttal briefs, respectively, on March 9 and 14, 2000. At the request of the respondents, the Department held a public hearing on March 17, 2000.

#### Scope of the Investigation

For purposes of this investigation, the product covered by the scope is all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this investigation are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added. The merchandise subject to this investigation is classified in the HTSUS at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

#### Period of Investigation

The period of this investigation (''POI'') is October 1, 1998, through March 31, 1999.

#### Nonmarket Economy Country and Market-Oriented Industry Status

The Department has treated the People's Republic of China (''PRC'') as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998) (''*Mushrooms*''). Under section 771(18)(C) of the Act, this NME designation remains in effect until it is revoked by the Department.

The respondents in this investigation have not requested a revocation of the PRC's NME status and no further information has been provided that would lead to such a revocation. Therefore, we have continued to treat the PRC as an NME in this investigation.

Furthermore, no interested party has requested that the NFAJC industry in the PRC be treated as a market-oriented industry and no further information has been provided that would lead to such a determination. Therefore, we have not treated the NFAJC industry in the PRC as a market-oriented industry in this investigation.

#### Separate Rates

All responding companies have requested separate, company-specific antidumping duty rates. (Because it has withdrawn from participation in the investigation, SAAME is no longer considered a ''responding company.'' *See* ''Use of Facts Available'' section, below.) In our *Preliminary Determination,* we preliminarily found that all responding companies had met the criteria for the application of separate antidumping duty rates. *See* 64 FR at 65677–78. At verification, we found no discrepancies with the information provided in the questionnaire responses of responding companies. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separate rates determinations with respect to these companies. We, therefore, determine that the responding companies in this investigation should be assigned individual dumping margins.

#### Antidumping Duty Rate for Those Producers/Exporters That Responded Only to the Separate Rates Questionnaire

For those producers/exporters that responded to our separate rates

questionnaire (*i.e.,* Xianyang Fuan Juice Co., Ltd. (''Fuan''); Xian Asia Qin Fruit Co., Ltd. (''Asia Fruit''); Changsha Industrial Products & Minerals Import & Export Corporation (''Changsha''); and Shandong Foodstuffs Imports & Export Corporation (''Shandong Foodstuffs'')), but did not respond to the full antidumping questionnaire because they were not selected to respond or because they did not submit a voluntary response, we have calculated a weighted-average margin based on the rates calculated for the fully-examined responding companies, except that we did not include rates which were zero (*i.e.,* North Andre), based entirely on facts available (*i.e.,* the PRC-wide rate), or for voluntary respondents (*i.e.,* Zhonglu and Lakeside). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (''*Bicycles from the PRC*'').

**PRC-Wide Rate**

As stated in the preliminary determination, information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. U.S. import statistics show that the responding companies did not account for all imports of NFAJC into the United States from the PRC. Given this discrepancy, it appears that not all PRC exporters of NFAJC responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate (''the PRC-wide rate'') to all NFAJC exporters in the PRC except those specifically identified in the ''Continuation of Suspension of Liquidation'' section of this notice.

**Use of Facts Available**

As explained in the preliminary determination, the PRC-wide antidumping rate is based on adverse facts available, in accordance with section 776 of the Act. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Use of facts available is warranted in this case because the producers/exporters other than those under investigation and the four cooperative exporters who were not selected as respondents, have failed to respond to the Department's questionnaire. While SAAME initially cooperated with the Department in submitting questionnaire responses, it did not permit verification of its information and withdrew from the investigation. Therefore, in accordance with section 776(a)(2)(D) of the Act, we find that use of facts available is warranted with respect to SAAME.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond in any form to the Department's questionnaire and SAAME, which withdrew from the investigation, failed to act to the best of their ability in this investigation. Further, absent a verifiable response from these firms, we must presume government control of these PRC companies. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned them a common, PRC-wide rate based on adverse inferences.

In accordance with our standard practice, as adverse facts available, we are assigning to the PRC-wide entity (i.e., those companies not receiving a separate rate), which did not cooperate in the investigation, the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation (see, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434 (July 29, 1998)). In this case, the adverse facts available margin is 51.74 percent, the margin from the petition, which is higher than the margin calculated for any respondent in this investigation.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (SAA), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

The petitioners' methodology for calculating export price (''EP'') and normal value (''NV'') is discussed in the *Notice of Initiation*. To corroborate the petitioners'' EP calculations, we compared the prices in the petition for the product to the prices submitted by respondents for the same product in similar volumes. To corroborate the petitioners' NV calculations, we compared the petitioners' factor consumption and factor values for the product to the data reported by the respondents for the most significant factors (*i.e.,* apples; labor; electricity; packing materials; factory overhead; selling, general, and administrative expenses; and profit) to the values selected for the final determination, as discussed below. Our analysis showed that, in general, the petitioners' data was reasonably close to the data submitted by the respondents and to the surrogate values chosen by the Department. *See* April 6, 2000 memorandum to the file (''Corroboration Memo''). Based on our analysis, we find that the figures and calculations set forth in the petition have probative value.

**Fair Value Comparisons**

To determine whether sales of NFAJC from the PRC to the United States were made at less than fair value, we compared the EP or CEP, as appropriate, to the NV. Our calculations followed the methodologies described in the *Preliminary Determination,* except as noted below and in the company-specific calculation memoranda dated April 6, 2000, which are on file in the Central Records Unit, Room B–099 of the main Department building.

**Export Price and Constructed Export Price**

For the price to the United States, we used EP or CEP as defined in section 772 of the Act, as appropriate. We calculated EP and CEP based on the same methodology as in the *Preliminary Determination,* with the following exception:

We did not use any reported market economy international freight rates where such freight was provided by a non-market economy freight forwarder. Instead, we used the surrogate value for international freight developed using Federal Maritime Commission data. *See* ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated April 6, 2000, Comment 3.

**Normal Value**

*1. Surrogate Country*

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. Regarding the first criterion, the Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, September 15, 1999) (''Surrogate Memorandum'')).

In the *Preliminary Determination,* we solicited further comments on this issue from the parties. We received such comments on February 25 and 28, 2000, and in the case and rebuttal briefs filed on March 9 and 14, 2000. For purposes of the final determination, we have continued to rely on India as our primary surrogate country in this investigation. *See* Decision Memorandum, Comment 1. When Indian values were not available or were determined to be aberrational, we used Indonesian or U.S. values.

*2. Factors of Production and Surrogate Values*

In our calculation of NV, we have used the same factors of production and the same surrogate values as in the *Preliminary Determination,* with the following exceptions:

To value rail freight we used a surrogate value based on Northern India Railways data. *See*

Decision Memorandum, Comment 5. To value aseptic bags for those respondents that did not purchase them from a market economy supplier, we used the average price paid by those respondents who did. *See* Decision Memorandum, Comment 6.

**Critical Circumstances**

On November 3, 1999, the Department issued its preliminary determination that critical circumstances exist with respect to SAAME (which has since withdrawn from this investigation), Lakeside, Haisheng, North Andre, Nannan, those non-selected respondents who requested separate rates (Fuan, Asia Fruit, Changsha, and Shandong Foodstuffs), and those entities subject to the PRC-wide rate. We also preliminarily determined that critical circumstances do not exist with respect to Oriental and Zhonglu. *See Preliminary Determination of Critical Circumstances: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China,* 64 FR 61835 (November 15, 1999). Our decision was based on the analysis of shipment data submitted by the respondents and available import statistics, as well as evidence of importer knowledge of dumping and the likelihood of resultant material injury. As discussed in the preliminary critical circumstances determination, the Department normally considers margins of 25 percent for EP sales and 15 percent for CEP sales and a preliminary International Trade Commission (''ITC'') determination of material injury sufficient to impute knowledge of dumping and the likelihood of resultant material injury.

Because the final calculated margins for North Andre, Haisheng, Zhonglu, and Oriental are below 15 percent, the Department's threshold for imputing knowledge of dumping is not met as to these companies. Thus, we do not find critical circumstances with respect to these companies. Furthermore, the weighted-average margin we calculated for the non-selected respondents (Fuan, Asia Fruit, Changsha, and Shandong Foodstuffs) is less than the 25 percent threshold for imputing knowledge with respect to EP sales, but greater than the 15 percent threshold for imputing knowledge with respect to CEP sales. Because the record as to these respondents does not indicate whether their sales were EP or CEP sales, we considered whether the 15 percent or 25 percent threshold was applicable with respect to those companies whose rates were used to calculate the weighted-average margin for the non-selected group (*i.e.,* Haisheng, Oriental, and Nannan). Given that the 25-percent threshold was appropriate for two of these three companies, we applied this threshold for the non-selected respondents and thus we did not impute knowledge of dumping to the non-selected respondent group. Accordingly, we also do not find critical circumstances for the companies in this group.

Because the final margins for Lakeside, Nannan and the companies in the PRC-wide entity (including SAAME) continue to be above the threshold for imputing knowledge of dumping, and because, as detailed in the preliminary determination, there is record evidence sufficient to impute knowledge of injury and to support a finding of massive imports over a relatively short period of time, we continue to find that critical circumstances exist with respect to these companies. *See* Decision Memorandum, Comment 10.

**Verification**

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by respondents.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the April 6, 2000, Decision Memorandum which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. 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. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all imports of the subject merchandise from the PRC, except for merchandise both produced and exported by North Andre, which has a zero margin, that are entered, or withdrawn from warehouse, for consumption on or after November 23, 1999, the date of publication of the *Preliminary Determination* in the **Federal Register**. In addition, for Lakeside, Nannan, and companies subject to the PRC-wide rate (including SAAME), we are directing Customs to continue to suspend liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 25, 1999, the date 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**, in accordance with our critical circumstances finding. Consistent with our negative final critical circumstances determination for Haisheng, Fuan, Asia Fruit, Changsha, and Shandong Foodstuffs (all of which were subject to a preliminary critical

circumstances finding), we will instruct Customs to liquidate without regard to antidumping duties and refund all bonds and cash deposits posted on subject merchandise exported by these companies that was entered, or withdrawn from warehouse, for consumption prior to November 23, 1999, the date of publication of the *Preliminary Determination* in the **Federal Register**.

Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage | Critical circumstances |
|---|---|---|
| Yantai North Andre Juice Co., Ltd | 0.00 | No. |
| Shaanxi Haisheng Fresh Fruit Juice Co., Ltd | 12.90 | No. |
| Sanmenxia Lakeside Fruit Juice Co., Ltd | 28.54 | Yes. |
| Shandong Zhonglu Co., Ltd./Rushan Shangjin-Zhonglu Foodstuff Co., Ltd./Shandong Luling Fruit Juice Co./Rushan Dongjin Foodstuffs. | 9.40 | No. |
| Yantai Oriental Juice Co., Ltd | 9.96 | No. |
| Qingdao Nannan Foods Co., Ltd | 26.43 | Yes. |
| Xian Asia Qin Fruit Co., Ltd | 15.36 | No. |
| Xian Yang Fuan Juice Co., Ltd | 15.36 | No. |
| Changsha Industrial Products & Minerals Import and Export Co., Ltd | 15.36 | No. |
| Shandong Foodstuffs Import and Export Corporation | 15.36 | No. |
| PRC-wide rate | 51.74 | Yes. |

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above, and to any entries exported by, but Not produced by, North Andre.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 6, 2000.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Appendix**

*List of Comments in the Issues and Decision Memorandum*

Comment 1: Choice of primary surrogate country
Comment 2: Valuation of apples
Comment 3: Valuation of ocean freight
Comment 4: Valuation of steam coal
Comment 5: Valuation of rail freight
Comment 6: Valuation of aseptic bags
Comment 7: Valuation of apple essence
Comment 8: Valuation of SG&A, factory overhead, and profit
Comment 9: Alleged wrongful initiation of investigation
Comment 10: Critical circumstances
Comment 11: Expansion of scope
Comment 12: Customs instructions
Comment 13: Zhonglu deposit rate

[FR Doc. 00–9240 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–827, A–475–828, A–557–809, A–565–801]**

### Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia and the Philippines

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

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

**FOR FURTHER INFORMATION CONTACT:** For Germany: Carrie Blozy or Rick Johnson at (202) 482–0165 and (202) 482–3818, respectively; for Italy, Helen Kramer or Linda Ludwig at (202) 482–0405 and (202) 482–3833, respectively; for Malaysia, Becky Hagen or Rick Johnson at (202) 482–3362 and (202) 482–3818, respectively; for the Philippines, Fred Baker or Robert James at (202) 482–2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**Postponement of Preliminary Determinations**

The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. The deadline for issuing the preliminary determinations in these investigations is now July 26, 2000.

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595, (January 31, 2000). The notice stated that the Department would issue its preliminary determinations no later than140 days after the date of initiation (*i.e.,* June 6, 2000).

The Department has now concluded, consistent with section 733(c)(1)(B) of the Act, that these cases are extraordinarily complicated, and that additional time is necessary to issue the preliminary determinations due to the complexity of certain issues raised in these cases, including the complexity of the transactions to be investigated and adjustments to be considered and the novelty of the issues presented. See Memorandum from Richard Weible and Edward Yang to Joseph A. Spetrini dated April 7, 2000. Therefore, in light of the fact that parties to this proceeding have been cooperating, pursuant to section 733(c)(1) of the Act, the Department is postponing the deadline

for issuing these determinations 50 days (*i.e.,* until July 26, 2000).

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: April 7, 2000.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–9238 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

**[I.D. 040700L2]**

### Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Agency:** National Oceanic and Atmospheric Administration (NOAA).

**Title:** Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary.

**Form Number(s):** None.

**OMB Approval Number:** None.

**Type of Request:** New collection.

**Burden Hours:** 725.

**Number of Respondents:** 788.

**Avg Hours Per Response:** 20 minutes to 10 hours depending on requirement.

**Needs and Uses:** The Management Plan for the Florida Keys National Marine Sanctuary (FKNMS) established 18 Sanctuary Preservation Areas (SPAs) and one Ecological Reserve (ER) that are ''no take'' zones. In creating these special zones, socioeconomic impact analyses, as well as other analyses, were done as required under the National Environmental Policy Act (NEPA). However, many of the benefits and costs identified in these analyses are speculative in nature and therefore an uncertainty about benefits and costs. In response to public concerns about the socioeconomic impacts of many of the FKNMS management plan and especially the ''no take'' zones, a socioeconomic element was included in the ecological monitoring program. The information collected will help monitor the financial performance of the commercial fishing operations that were displaced from the ''no take'' zones to test the hypotheses that there are short term losses and/or long term gains to commercial fishermen and monitor the use, perceptions of users as to quality of the SPAs and ERs, and changes in market and economic values associated with SPA and ER uses to test that user conflicts were resolved and/or that there would be both short term and long term gains to non-consumptive users and net gains to the local economy.

**Affected Public:** Individuals or households and businesses or other for-profit organizations.

**Frequency:** Annually.

**Respondent's Obligation:** Voluntary.

**OMB Desk Officer:** David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *LEngelme@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 4, 2000.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–9121 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–08–F**

## DEPARTMENT OF COMMERCE

**[I.D. 040700LE]**

### Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Agency:** National Oceanic and Atmospheric Administration (NOAA).

**Title:** South Florida Artificial and Natural Reefs–Economic Valuation Study.

**Form Number(s):** None.

**OMB Approval Number:** None.

**Type of Request:** New collection.

**Burden Hours:** 2,733.

**Number of Respondents:** 9,600.

**Average Hours Per Response:** 4 minutes to 1 hour depending on requirement.

**Needs and Uses:** The Florida Keys National Marine Sanctuary, along with the State of Florida, manage coastal and ocean resources. This study involves artificial and natural reefs off the coasts of southeast Florida. NOAA, the four south Florida counties (Broward, Miami-Dade, Monroe and Palm Beach) and the State of Florida have formed a partnership and are funding a study to estimate the market economic impact (e.g., sales/output, income and employment) and non-market economic value (consumer's surplus) of both artificial and natural reefs in south Florida. The State of Florida has an artificial reef program in which each coastal county can participate. Each county can apply for state funds to place artificial reefs off the coasts of their county and private groups wanting to sink artificial reefs can also participate. The counties and the State of Florida are under increasing pressure to add new artificial reefs and economic justification is required.

**Affected Public:** Individuals or households and businesses or other for-profit organizations.

**Frequency:** One-time.

**Respondent's Obligation:** Voluntary.

**OMB Desk Officer:** David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *lengelme@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 5, 2000.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–9122 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–08–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D.040300B]**

### Marine Mammals; File No. 526–1523–00

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Allied Whale, College of the Atlantic, 105 Eden Street, Bar Harbor, ME 04609 (Principal Investigator: Sean K. Todd, Ph.D.), has applied in due form for a permit to take humpback whale

(*Megapteray novaeangliaey*), finback whale (*Balaenopteray physalusy*), and minke whale (*Galaenopteray acutorostratay*) for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before May 15, 2000.

**ADDRESSES:** The application 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 13130, Silver Spring, MD 20910 (301/713–2289); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *ety seqy.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *ety seqy.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to continue and extend photo-identification and biopsy sampling program of large whales. The following table outlines the animals to be taken and types of take requested annually primarily in the Gulf of Maine and occasionally from the New York Bight to the U.S./Canada border.

| Species | # Photo-ID | #Animals Biopsy Sampled | #Takes per animal | #Incidental harassment of target species | #Biopsy samples Import/ Canada |
|---|---|---|---|---|---|
| Humpback whale | 200 | 50 | 5 | 300 | 50 |
| Finback whale | 200 | 50 | 5 | 400 | 50 |
| Minke whale | 50 | 15 | 5 | 75 | 50 |

| Non-Target Species | # Non-Target Animals Incidentally harassed |
|---|---|
| Harbor porpoise | Unlimited |
| Atlantic white-sided dolphin | ” |
| Harbor seal | ” |
| Gray seal | ” |

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *ety seqy.*), 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.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular 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 by other electronic media.

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: April 4, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–9124 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 040300D]**

### Marine Mammals; File No. 522–1569

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Randall S. Wells, Ph.D., Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, Florida 34236, has applied in due form for a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before May 15, 2000.

**ADDRESSES:** The application 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 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (727/570–5312).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular 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 by other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Drevenak, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to harass up to 120 bottlenose dolphins (*Tursiops truncatus*) annually during the conduct of capture, examination, sampling, marking, and release activities. The research will take place over a five year period in the shallow coastal waters of central west Florida. Individual animals may be recaptured and released up to three times annually.

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: April 5, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–9229 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Implementation of an Import Sublimit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

April 7, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs implementing a sublimit.

**EFFECTIVE DATE:** April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to the Memorandum of Understanding (MOU) between the Governments of the United States and Belarus, dated February 17, 2000, a notice published in the **Federal Register** on March 22, 2000 (65 FR 15315) established a new limit for Category 622 of 11,500,000 square meters, effective for the period January 1, 2000 through December 31, 2000. This notice cancelled and superseded the limit set forth in **Federal Register** notice 64 FR 71982, published on December 22, 1999.

In addition, both governments agreed to establish a sublimit of 1,000,000 square meters for the entry for consumption and withdrawal from warehouse for consumption of glass fiber fabric in Category 622–L weighing 185 grams or less per square meter. This directive implements the Category 622–L sublimit for the period that began on January 1, 2000 and extends through December 31, 2000.

This sublimit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999).

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 7, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel the directive issued to you on March 16, 2000. That directive concerns imports of certain man-made fiber textile products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2000 and extends through December 30, 2000.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, effective on April 14, 2000, you are directed to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622–L, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000, in excess of 1,000,000 square meters [1].

Textile products in Category 622–L which have been exported to the United States prior to January 1, 2000 shall not be subject to the sublimit established in this directive.

This sublimit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

Import charges to the sublimit will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.00–9179 Filed 4–12–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Ocean Research Advisory Panel

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

**DATES:** The meeting will be held on Wednesday, 26 April, 2000 from 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at The Brookings Institution, Somers Room, 1775 Massachusetts Avenue, NW, Washington, DC.

[1] Category 622–L (within Category 622): only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010. The sublimit has not been adjusted to account for any imports exported after December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steven E. Ramberg, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–4358.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss current and future activities of the National Oceanographic Partnership Program.

Dated: April 5, 2000

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–9223 Filed 4–12–00; 8:45 am]

**BILLING CODE 3810–FF–U**

## UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Uniformed Services University of the Health Sciences.

**TIME AND DATE:** 8:30 a.m. to 4 p.m., May 19, 2000.

**PLACE:** Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**STATUS:** Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:**

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—February 8, 2000
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: April 11, 2000.

**Linda Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–9380 Filed 4–11–00; 3:45 pm]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 15, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 7, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

*Office of Educational Research and Improvement*

*Type of Review:* Reinstatement.

*Title:* 2000–01 Teacher Follow-up Survey.

*Frequency:* Clearance is being sought for year 2000 only.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 8,300.
Burden Hours: 4,616.

*Abstract:* This survey of 8,300 public and private elementary and secondary school teachers is the fourth in a series. It is a follow-up to the 1999–2000 Schools and Staffing Survey (SASS) and collects data on public school and private school teachers characteristics and attitudes, as well as the factors affecting their decisions to stay in, or leave, the teaching profession.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). 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. 00–9175 Filed 4–12–00; 8:45 am]

**BILLING CODE 4000–01–U**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 15, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th

Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 7, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

*Office of the Undersecretary*

*Type of Review:* New.

*Title:* Supplemental Study of the Technology Literacy Challenge Fund (TLCF).

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 636.

Burden Hours: 970.

*Abstract:* This study will collect and analyze information about the implementation and outcomes of the Technology Literacy Challenge Fund at the state and local levels. Drawing upon sources such as the annual state TLCF performance reports, local technology plans, and survey work, this study will produce a national representative picture of TLCF's contributions to the availability and use of technology in schools and provide information on targeting, flexibility and other key aspects of the program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–9176 Filed 4–12–00; 8:45 am]

**BILLING CODE 4000–01–U**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–206–005]**

## Atlanta Gas Light Company; Notice of Technical Conference

April 7, 2000.

Take notice that a technical conference will be held on Wednesday, May 10, 2000, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and staff are permitted to attend.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9162 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–141–000]**

## Northwest Pipeline Corporation; Notice of Application

April 7, 2000.

Take notice that on March 28, 2000, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP00–141–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for permission and approval for Northwest to construct and operate relocated replacement pipeline segments and to abandon the replaced pipeline segments, near the White River in King County, Washington to preserve the integrity of Northwest's mainline while the river migrates, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northwest proposes to replace approximately 1,900 feet of both its 26-inch mainline and its 30-inch mainline loop on either side of the White River by installing new 26-inch and 30-inch pipelines at a lower depth and offset from its existing right-of-way and then abandoning the replaced pipeline segments by removal. Northwest also proposes to remove a previously retired 665-foot segment of 26-inch pipeline crossing the White River.

Northwest states that due to potential issues with threatened species in the White River, Northwest is seeking case-specific approvals herein rather than pursuing this pipeline replacement project under its existing blanket certificate authority.

Northwest declares that the total estimated cost for the proposed project is approximately $5,604,000, comprised of approximately $3,871,000 for the installation of replacement pipeline and approximately $1,733,000 for removal of replaced pipeline and appurtenances. Since this project is designed to maintain safety and reliability of Northwest's transmission system for the benefit of existing customers. Northwest requests all project costs should be permitted rolled-in treatment in Northwest's next rate case, as dictated by FERC's Policy Statement issued September 15, 1999, in Docket No. PL99–3–000.

Any questions regarding the application should be directed to Gary Kotter, Manager, Certificates, at (801) 584–7117 (voice) and (801) 584–7764 (fax), Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 28, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the

Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9169 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 1988–007; Haas-Kings River Project]**

## Pacific Gas and Electric Company; Notice of Telephone Conference

April 7, 2000.

On Tuesday, April 18, 2000, the Federal Energy Regulatory Commission (Commission) staff will conduct a telephone conference with representatives of the U.S. Fish and Wildlife Service, the Forest Service, and Pacific Gas and Electric Company to discuss the Biological Assessment for the Haas-Kings River Project, FERC Docket No. 1988–007. The Commission staff will initiate the telephone conference. The telephone conference will begin at 1 p.m. Eastern Daylight Time (10 a.m. Pacific Daylight Time).

The telephone conference will be conducted according to the procedures used at Commission meetings. Meeting minutes will be taken, which will be distributed to interested parties and placed in the Commission's public files for the proceeding.

For further information, please contact Patti Leppert-Slack at the Commission, (202) 219–2767.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9163 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP00–143–000, et al.]**

## Transcontinental Gas Pipe Line Corporation; Notice of Applications

April 7, 2000.

Take notice that on March 29, 2000, transcontinental Gas Pipe Line Corporation (Applicant), One Williams Center, Suite 4100, Tulsa, Oklahoma, 74172, through its agent, Williams Energy Marketing & Trading Company [1](Williams), tendered for filing, applications for certificates of public convenience and necessity pursuant to Section 7(b) of the Natural Gas Act (NGA) to abandon certain firm sales agreements under Applicant's Rate Schedule FS between Applicant and various customers pursuant to a Settlement Agreement approved by the Commission in Docket No. CP88–391, et al. on June 19, 1991, as amended by order issued December 17, 1991,[2] all as more fully set forth in the application, which is on file and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Applicant asserts that no abandonment of any facility is proposed. Applicant proposes to abandon nineteen service agreements under its Rate Schedule FS. The information is the table below summarizes each individual abandonment application:

| Docket No. | Customer name | Date of agreement to proposed abandonment of current service | Proposed effective date of abandonment |
|---|---|---|---|
| CP00–143–000 | Peco Energy Company | November 11, 1998 | March 31, 2001. |
| CP00–144–000 | City of Lexington, North Carolina | March 29, 1999 | March 31, 2001. |
| CP00–145–000 | City of Shelby, North Carolina | March 26, 1999 | March 31, 2001. |
| CP00–146–000 | Brooklyn Union Gas Company | March 31, 1999 | March 31, 2001. |
| CP00–147–000 | Town of Blacksburg South Carolina | March 31, 1999 | March 31, 2001. |
| CP00–148–000 | City of Kings Mountain, North Carolina | March 29, 1999 | March 31, 2001. |
| CP00–149–000 | KeySpan Energy Trading Services | March 31, 1999 | March 31, 2001. |
| CP00–150–000 | City of Union, South Carolina | March 29, 1999 | March 31, 2001. |
| CP00–151–000 | Public Service Electric and Gas Company. | March 1, 1999 | March 31, 2001. |
| CP00–152–000 | Elizabethtown Gas Company | July 21, 1999 | July 31, 2001. |
| CP00–153–000 | City of Alexander City, Alabama | March 30, 1999 | March 31, 2001. |
| CP00–154–000 | City of Laurens, South Carolina | March 29, 1999 | March 31, 2001. |
| CP00–155–000 | Piedmont Natural Gas Company | January 6, 1999 | March 31, 2001. |
| CP00–156–000 | Delmarva Power & Light Company | March 25, 1999 | March 31, 2001. |
| CP00–157–000 | North Carolina Gas Service | March 11, 1999 | March 31, 2001. |
| CP00–158–000 | South Jersey Gas Company | February 10, 1999 | March 31, 2001. |
| CP00–159–000 | Consolidated Edison Company of New York. | March 24, 1999 | March 31, 2001. |
| CP00–160–000 | Columbia Gas of Virginia | February 3, 1999 | March 31, 2001. |
| CP00–161–000 | City of Greer, South Carolina | March 18, 1999 | March 31, 2001. |

[1] Formerly Williams Energy Services Company.

[2] See orders at 55 FERC ¶61,466 (1991) and 57 FERC ¶ 61,345 (1991).

Any person desiring to be heard or to protest these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, by or before April 28, 2000, in accordance with Sections 385.214 and 385.211 of the Commission's rules and 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 proceeding. 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9170 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG00–94–000, et al.]**

## Northwest Generation Company, et al. Electric Rate and Corporate Regulation Filings

April 5, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Northeast Generation Company

[Docket No. EG00–94–000]

Take notice that on April 3, 2000, Northeast Generation Company, P.O. Box 270, Hartford, Connecticut, 06141, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The amendment provides additional information concerning the uses of lands and waters at the unlicenced hydroelectric projects that are the subject of the application.

*Comment date*: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 2. North American Power Brokers, Inc.

[Docket No. ER96–1156–006]

Take notice that on March 24, 2000, North American Power Brokers, Inc. filed quarterly reports for information only.

### 3. PEC Energy Marketing, Inc; DePere Energy Marketing, Inc; SkyGen Energy Marketing LLC; DePere Energy LLC

[Docket No. ER97–1431–010; Docket No. ER97–1432–010; Docket No. ER99–972–003; Docket No. ER97–4586–003]

Take notice that on March 28, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

### 4. Total Gas & Electric, Inc. Agway Energy Services, Inc. Metro Energy Group, LLC

[Docket No. ER97–4202–010; Docket No. ER97–4186–009 Docket No. ER99–801–003]

Take notice that on March 30, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

### 5. Ameren Services Company

[Docket No. ER00–1381–001]

Take notice that on March 30, 2000, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement, between ASC and Citizens Electric Corporation. ASC asserts that the purpose of the agreements is to permit ASC to provide service over its transmission and distribution facilities to Citizens Electric Corporation pursuant to the Ameren Open Access Tariff. The executed agreements supersede an unexecuted Network Service Agreement and an unexecuted Network Operating Agreement previously filed on January 31.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Sierra Pacific Power Company

[Docket No. ER00–2003–000]

Take notice that on March 30, 2000, Sierra Pacific Power Company (Sierra Pacific) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 2.2 of the Settlement Agreement (the Agreement) filed on October 12, 1999, in Docket No. ER99–2339–000, a transmission loss study that indicates a change in the factor used to calculate transmission service losses under its joint open-access transmission tariff, FERC Original Volume No. 1, filed in Docket No. ER99–34–000. Sierra Pacific also submitted a similar amendment to its joint open-access transmission tariff filed on March 3, 2000, in Docket No. ER00–1801–000, in anticipation of the pending merger among Sierra Pacific, Nevada Power Company, and Portland General Electric Company.

Copies of this filing have been served upon those persons on the Commission's official service list compiled in Docket No. ER00–2339–000 and in Docket No. ER00-1801–000.

Sierra Pacific requests that its filing be made effective in Docket No. ER99–34–000 as of November 1, 1999 and in Docket No. ER00–1801–000 as of the effective date of that joint tariff.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. Nevada Power Company

[Docket No. ER00–2004–000]

Take notice that on March 30, 2000, Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 2.2 of the Settlement Agreement (the Agreement) filed on February 8, 2000, in Docket No. ER99–3110–000, a transmission loss study that indicates a change in the factor used to calculate transmission service losses under its joint open-access transmission tariff, FERC Original Volume No. 1, filed in Docket No. ER99–34–000. Nevada Power also submitted a similar amendment to its joint open-access transmission tariff filed on March 3, 2000, in Docket No. ER00–1801–000, in anticipation of the pending merger among Nevada Power, Sierra Pacific Power Company, and Portland General Electric Company.

Copies of this filing have been served upon those person on the Commission's official service list compiled in Docket No. ER00–3110–000 and in Docket No. ER00-1801–000.

Nevada Power requests that its filing be made effective in Docket No. ER99–34-000 as of March 1, 2000 and in Docket No. ER00–1801–000 as of the effective date of that joint tariff.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Central Maine Power Company

[Docket No. ER00–2006–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's regulations (18 CFR 35.12): (i) an unexecuted Interconnection Agreement, dated as of March 1, 2000 (the IA); (ii) an executed service agreement for Firm Local Point-to-Point Transmission Service, dated as of March 3, 2000 (the TSA); (iii) an executed service agreement for Local Network Transmission Service, dated as of March 1, 2000 (the LNSA); and (iv)

an unexecuted Local Network Operating Agreement (the LNOA), dated as of March 1, 2000. The IA provides for interconnection service to S.D. Warren, Inc. (S.D. Warren) at the rates, terms, charges, and conditions set forth therein. The TSA provides for Firm Point-to-Point Transmission Service. The LNSA provides for Local Network Transmission Service. The LNOA provides for net inputs to the Facility for Station Service and any other load.

CMP is requesting that (a) the IA become effective March 1, 2000; (b) the TSA become effective March 3, 2000; (c) the LNSA become effective March 1, 2000; and (d) the LNOA become effective March 1, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and S.D. Warren.

*Comment date*: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. State Line Energy, L.L.C.**

[Docket No. ER00–2007–000]

On March 30, 2000, State Line Energy, L.L.C. (State Line), tendered for filing a short-term service agreement for sales under State Line's Market Rate Tariff, which was accepted for filing in Document No. ER96–2869–000:

1. Amendment No. 1 to Power Purchase Agreement between Commonwealth Edison Company and State Line Energy, L.L.C.

*Comment date*: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Commonwealth Edison Company**

[Docket No. ER00–2008–000]

Take notice that on March 30, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and Commonwealth Edison Company in its Wholesale Merchant Function (WMD). This agreement will govern ComEds provision of network service to serve the City of Dowagiac (ADowagiac) under the terms of ComEd's Open Access Transmission Tariff (OATT)

ComEd requests an effective date of March 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served on WMD and Dowagiac.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Bangor Hydro-Electric Company**

[Docket No. ER00–2009–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for firm point-to-point transmission service with Morgan Stanley Capital Group Inc.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Bangor Hydro-Electric Company**

[Docket No. ER00–2010–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for firm point-to-point transmission service with PPL EnergyPlus Co.

*Comment date*: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Bangor Hydro-Electric Company**

[Docket No. ER00–2011–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for non-firm point-to-point transmission service with Morgan Stanley Capital Group Inc.

*Comment date*: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Bangor Hydro-Electric Company**

[Docket No. ER00–2012–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for non-firm point-to-point transmission service with PPL EnergyPlus Co.

*Comment date*: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. American Electric Power Service Corporation**

[Docket No. ER00–2013–000]

Take notice that on March 30, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement for Statoil Energy Services, Inc. That agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) which has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after March 1, 2000.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

*Comment date*: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. PPL Electric Utilities Corporation**

[Docket No. ER00–2014–000]

Notice is hereby given that effective May 29, 2000, Rate Schedule FERC No. 156 effective on June 1, 1990 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon FirstEnergy Corp.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. New England Power Pool**

[Docket No. ER00–2016–000]

Take notice that on March 30, 2000 PG&E Generating, USGen New England, Inc., PG&E Energy Trading-Power L.P., FPL Energy, LLC, Sithe New England Holdings, LLC, Southern Energy New England, LLC, Wisvest-Connecticut, LLC, Duke Energy North America, LLC, Dighton Power Associates L.P., Tiverton Power Associates L.P., Rumford Associates L.P., Great Bay Power Corporation, NRG Power Marketing, Inc., Somerset Power, LLC, Middletown Power, LLC, Norwalk Harbor Power, LLC, Devon Power, LLC, Montville Power, LLC, Connecticut Jet Power, LLC, and Indeck-Pepperell Power Associates, Inc. (the Supporting Generators) submitted for filing, pursuant to Section 206 of the Federal Power Act, a proposal for a comprehensive congestion management system (CMS) and multi-settlement system (MSS).

The Supporting Generators state that copies of the filing have been served upon all entities listed in the above captioned docket, the Participants in the New England Power Pool, non-Participant transmission customers, and the New England State Governors and Regulatory Commissions.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Illinois Power Company**

[Docket No. ER00–2021–000]

Take notice that on March 30, 2000, Illinois Power Company notified the Federal Energy Regulatory Commission (Commission) that, as of February 25, 2000, El Paso Merchant Energy, L.P. (EPME), as successor to Sonat Power Marketing L.P. (Sonat), provided to Illinois Power, notice of termination of the transmission service agreements which were filed with the Commission in Docket No. ER96–955–000, and pursuant to which Sonat and EPME took firm and non-firm transmission service under Illinois Power's open access transmission tariff.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Central Maine Power Company**

[Docket No. ER00–2022–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP), tendered for filing Executed Service Agreements for Local Network Transmission Service and Local Network Operating Agreements. CMP states that these transactions are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests that the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. Central Maine Power Company**

[Docket No. ER00–2023–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP), tendered for filing Executed Service Agreements for Local Network Transmission Service and Unexecuted Local Network Operating Agreements. CMP states that these transactions are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests that the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine. .

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. PPL Electric Utilities Corporation**

[Docket No. ER00–2024–000]

Notice is hereby given that effective May 31, 1992, Rate Schedule FERC No. 99 effective on May 22, 1990 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Atlantic City Electric Company.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. PPL Electric Utilities Corporation**

[Docket No. ER00–2025–000]

Notice is hereby given that effective May 31, 1995, Rate Schedule FERC No. 100 effective on June 1, 1990 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Jersey Central Power & Light Company.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. PPL Electric Utilities Corporation**

[Docket No. ER00–2026–000]

Notice is hereby given that effective March 20, 1998, Rate Schedule FERC No. 85 effective on October 1, 1991 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Atlantic City Electric Company.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. PPL Electric Utilities Corporation**

[Docket No. ER00–2027–000]

Take notice that on March 30, 2000, PPL Electric Utilities Corporation filed a Notice that effective December 31, 1999, Rate Schedule FERC No. 84 effective on April 17, 1985 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Jersey Central Power & Light Company.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. PPL Electric Utilities Corporation**

[Docket No. ER00–2028–000]

Notice is hereby given that effective May 29, 2000, Rate Schedule FERC No. 105 effective on June 10, 1991 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Baltimore Gas & Electric Company.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. APS Energy Services Company, Inc.**

[Docket No. ER00–2029–000]

Take notice that on March 30, 2000, APS Energy Services Company, Inc. (APSES), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that APSES had completed all the steps for pool membership. APSES requests that the Commission amend the WSPP Agreement to include it as a member.

APSES requests an effective date of March 31, 2000 for the proposed amendment. Accordingly, APSES requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Niagara Mohawk Power Corporation**

[Docket No. ER00–2037–000]

Take notice that on March 30, 2000, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed form Service Agreement between NMPC and the State University of New York at Buffalo (Purchaser). The Service Agreement specifies that the Purchaser has signed and agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and having an effective date of March 13, 1993, allows NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence from the Purchaser.

NMPC is requesting an effective date of November 1, 1999 for the agreement.

NMPC has served copies of the filing upon the New York State Public Service Commission and the companies included in a Service List enclosed with the filing.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Niagara Mohawk Power Corporation**

[Docket No. ER00–2038–000]

Take notice that on March 30, 2000, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed form Service Agreement between NMPC and Amherst Utility Cooperative (Purchaser). The Service Agreement specifies that the Purchaser has signed and agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April

15, 1994, and having an effective date of March 13, 1993, allows NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence from the Purchaser.

NMPC is requesting an effective date of November 1, 1999 for the agreement.

NMPC has served copies of the filing upon the New York State Public Service Commission and the companies included in a Service List enclosed with the filing.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Illinois Power Company**

[Docket No. ER00–2039–000]

Take notice that, on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement under which Tri-County Electric Cooperative, Inc. will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of March 1, 2000.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. Illinois Power Company**

[Docket No. ER00–2040–000]

Take notice that, on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing firm and non-firm transmission service agreements under which Allegheny Energy Supply Company, LLC, will take transmission service pursuant to Illinois Power's open access transmission tariff. The agreements are based on the forms of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 24, 2000.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. Illinois Power Company**

[Docket No. ER00–2041–000]

Take notice that on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing a non-firm transmission service agreement under which The Energy Authority, Inc. will take transmission service pursuant to Illinois Power's open access transmission tariff. The agreement is based on a form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 24, 2000.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**32. Illinois Power Company**

[Docket No. ER00–2042–000]

Take notice that, on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement under which Clinton County Electric Cooperative, Inc. will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of March 1, 2000.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**33. Southern California Edison Company**

[Docket No. ER00–2043–000]

Take notice that on March 30, 2000, Southern California Edison Company (SCE) tendered for filing Amendment No. 6 to the Power Contract between SCE and the State Of California Department Of Water Resources. Amendment No. 6 amends the calculation of SCE's return obligation to reflect divestiture of its Oil and Gas generating stations.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**34. Black River Power LLC**

[Docket No. ER00–2044–000]

Take notice that on March 30, 2000, Black River Power LLC (Black River) tendered for filing a Power Purchase and Sale Agreement with Niagara Mohawk Energy Marketing, Inc. (Niagara) under Black River's market-based sales tariff.

Black River requests that the agreement be made effective on March 1, 2000.

A copy of the filing has been served on Niagara.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**35. Virginia Electric and Power Company**

[Docket No. ER00–2045–000]

Take notice that on March 30, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing a Termination Notice of the Service Agreement between Virginia Electric and Power Company and Illinova Power Marketing, Inc. (IPMI), formerly Illinois Power Company, dated March 3, 1997 and approved by the FERC in a letter order on May 22, 1997 under Docket No. ER97–2394–000.

Virginia Power respectfully requests an effective date of the termination of April 30, 2000, as requested by Dynegy Power Marketing, Inc. (DYPM), successor to IPMI.

Copies of the filing were served upon Dynegy Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**36. PECO Energy Company**

[Docket No. ER00–2048–000]

Take notice that on March 29, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Service Agreement dated March 28, 2000 with Allegheny Energy Supply Company, LLC (AESC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 28, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Allegheny Energy Supply Company, LLC and to the Pennsylvania Public Utility Commission.

*Comment date:* April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**37. Central Maine Power Company**

[Docket No. ER00–2062–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP) submitted ''Unexecuted Service Agreements for Local Network Transmission Service'' and ''Unexecuted Local Network Operating Agreements''. CMP states that these transactions are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests that the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine. .

*Comment date:* April 20, 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. 00–9161 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2853–058]**

## Montana Department of Natural Resources and Conservation; Notice of Availability of Environmental Assessment

April 7, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application requesting the Commission's approval of an application to amend the license for the Broadwater Project for the construction of a structural wall in the project reservoir. The wall would extend from the upstream face of the project dam 150 feet into the reservoir. The wall constructed of rock riprap would separate an irrigation canal intake at the project dam from the hydraulic influences of the turbine intake and would alleviate the clogging of the irrigation canal intake with debris during spring runoff. The Broadwater Project is located on the Missouri River in Broadwater County, Montana.

An Environmental Assessment (EA) has been prepared by staff for the proposed action. In the EA, Commission staff does not identify any significant impacts that would result from the Commission's approval of the construction of the proposed wall in the project reservoir. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

The EA has been attached to and made a part of an Order Amending License, issued March 28, 2000, for the Broadwater Project (FERC No. 2853–058). Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at *www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9168 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protects

April 7, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type*: Non-Project Use of Project Lands and Waters.

b. *Project No*: P–1494–205.

c. *Dated Filed*: March 20, 2000.

d. *Applicant*: Grand River Dam Authority.

e. *Name of Project*: Pensacola Project.

f. *Location*: The Pensacola Project is located on the Grand (Neoscho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact*: Shannon Dunn at *shannon.dunn@ferc.fed.us,* or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests*: May 8, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–1494–205) on any comments, motions, or protests filed.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests approval to grant permission to Grand Marine L.L.C., to dredge approximately 43,013 cubic yards of material to construct a new access canal 1,258 feet-long (50′ wide) and a boat basin (150′ x 150′). The canal and boat basin would be adjacent to Echo Bay in the Grand Lake O' the Cherokees. The canal would provide boat access to marine service work and in-water boat sales display along State Highway 125 north of Martin's Landing. No property conveyance is proposed.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'' ''PROTEST'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of

the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file commented within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9164 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

April 7, 2000.

Take notice that the Commission intends to hold scoping meetings for the following hydroelectric application which has been filed with the Commission:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2056–016.

c. *Date filed:* December 21, 1998.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* St. Anthony Falls Project.

f. *Location:* On the Mississippi River, near Minneapolis and St. Paul, Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mark H. Holmberg, P.E., Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401, (612) 330–6568.

i. *FERC Contact:* Any questions on this notice should be addressed to Monte TerHaar, E-mail address monte.terhaar@ferc.fed.us, or telephone (202) 219–2768.

j. *Deadline for filing scoping comments:* 30 days after date of scoping meeting. All documents (original and eight copies) should be filed with: June 9, 2000.

All documents should be filed with David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–2056–016) on any comments, motions or protests filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time..

l. *Description of Project:* The Project consists of the following existing facilities located across from the U.S. Army Corps of Engineers Upper Saint Anthony Lock: (1) Horseshoe Dam, 1 1,952-foot-long concrete, timber, and rock structure topped with 1.6-foot-high wooden flashboards; (2) the main spillway, a concrete, timber and rock structure 425 feet wide and 150 feet-long; (3) a 340-foot-long roll dam; (4) a 358-acre reservoir with a normal pool water surface elevation of 799.2 feet NGVD, and a total storage capacity of 967 acre-feet; (5) a concrete and masonry powerhouse, 133 feet long by 92 feet wide; (6) 5 turbines with a total installed capacity of 12,400 kilowatts, and a maximum hydraulic capacity of 4,025 cfs, producing an average of 79,518 megawatthours annually; and (7) four 115-kilovolt primary transmission lines; and other appurtenances..

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rimns.htm or call 202–208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above..

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

### Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the E.A.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

*Daytime Meeting:* Tuesday, May 9, 2000 at 1 p.m.

*Evening Meeting:* Tuesday, May 9, 2000 at 7:30 p.m.

*Location:* Audtiorium—St. Anthony Falls Laboratory, Third Ave. SE & Mississippi River, Minneapolis, MN 55414, Phone: 612–647–4010.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

### Site Visit

The applicant and Commission staff will conduct a project site visit on Tuesday, May 9, 2000 starting at 3:00 p.m. We will meet at the parking lot near the project powerhouse which is adjacent to the laboratory. Those who wish to attend the site visit should contact Lloyd Everhart of NSP at 715–839–2692 on or before May 5, 2000.

### Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resource at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

**Procedures**

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies, with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying this issue to be addressed in the EA.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9165 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Request To Surrender License and Soliciting Comments, Motions To Intervene, and Protests

April 7, 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:* 11214–008.

c. *Date Filed:* March 27, 2000.

d. *Applicant:* Southwestern Electric Cooperative, Inc.

e. *Name of Project:* Carlyle Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' Carlyle Dam on the Kaskaskia River near the City of Carlyle, in Clinton County, Illinois. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants' Contacts:* Kerry Sloan, Southwestern Electric Cooperative, Inc., South Elm Street & Route 40, Greenville, IL 62246, (618) 664–1025 and Michael Postar, Robert Weinberg, Tanja M. Shonkwiler, and Sean M. Neal, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036–3203, (202) 467–6370.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* May 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (11214–008) on any comments or motions filed.

k. *Description of Request:* The licensee requests to surrender the Carlyle Hydroelectric Project because it no longer wishes to proceed with constructing and maintaining the project as proposed in the original license. The licensee also states that construction and maintenance of the project would no longer be economically feasible.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comments date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9166 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Declaration of Intention and Soliciting Comments Motions To Intervene, and Protests

April 7, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* D100–3–000.

c. *Date Filed:* March 24, 2000.

d. *Applicant:* Kootznoowoo, Incorporated.

e. *Name of Project:* Angoon Hydroelectric Project.

f. *Location:* On Thayer Creek, Juneau Borough, near Angoon, Alaska. (T. 49 S., R. 67 E., secs. 26 and 35; T. 50 S., R. 67 E., secs. 2, 11, 12, 13, 14, 25, 26, and 36; T, 50 S., R. 68 E., secs. 30 and 31, Copper River Base and Meridian). The project would utilize federal lands (Admiralty Island National Monument and Kootznoowoo Wilderness).

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. Carlton Smith, Chief Executive Officer, Kootznoowoo, Incorporated, 8585 Old Dairy Road, suite 201, Juneau, Alaska 99801, telephone (907) 790–2992, FAX (907) 790–2005, E-Mail http://www.kootznoowoo.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: diane.murray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* May 12, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the docket number (D100–3–000) on any comments or motions filed.

k.*Description of Project:* The proposed project would consist of: (1) a 20-foot-high diversion dam; (2) a 6,350-foot-long penstock; (3) a powerhouse with two generating units, with a total generating capacity of 1,000 kW; (4) a 5.8-mile overland with a 0.9-mile underwater transmission line; and (5) appurtenant facilities. The proposed project would supply electric power to the City of Angoon. Angoon is electrically isolated from any other system..

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l.*Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who filed a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9167 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

## Regulations Governing Off-the-Record Communications; Public Notice

April 7, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

| | | |
|---|---|---|
| Exempt: | | |
| 1. CP00–17–000 and CP00–19–00 | 2/4/00 | Edwin M. Eudaly. |
| 3. CP00–6–000 | 3/23/00 | Ken Huntington. |
| 3. CP00–6–000 | 3/22/00 | Ken Huntington. |
| 4. CO00–6–000 | 3/22/00 | Ken Huntington. |
| 5. CP00–14–000 | 3/25/00 | Nadine Foley. |
| 6. Project Nos. 2318–002, 2047–004, 2482–014 and 2554–003 | 3/24/00 | David A. Stilwell. |
| 7. CP00–14–000, CP00–15–000 and CP00–16–000 | 3/29/00 | Todd Mattson. |
| 8. CP00–14–000, CP00–15–000 and CP00–16–000 | 3/27/00 | Mark Cline. |

| | | |
|---|---|---|
| 9. CP00–40–000 | 3/31/00 | Lauren O'Donnell. |
| 10. CP99–392–000 | 4/3/00 | John Wisniewski. |
| Prohibited: | | |
| 1. CP97–315–000, *et al.* | 3/31/00 | Ed Gilliard. |
| 2. Project No. 9974–040 | 4/5/00 | Phyllis Gerth. |
| 3. Project No. 9974–040 | 4/5/00 | Dean Reichert. |
| 4. Project No. 9974–040 | 4/5/00 | Patricia & Bert Hesse. |
| 5. Project No. 9974–040 | 4/5/00 | Kenneth J. Robillard and Brenda H. Robillard. |
| 6. Project No. 9974–040 | 4/5/00 | Earl J. Weihert. |

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–9171 Filed 4–12–00; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6576–8]**

## Slotted Guidepoles at Certain Petroleum and Organic Liquid Storage Vessels

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

**ACTION:** Notice of storage tank emission reduction partnership program.

**SUMMARY:** The United States Environmental Protection Agency (''EPA'') is today announcing an opportunity for the regulated community to participate in the Storage Tank Emission Reduction Partnership Program described in this notice.

**DATES:** Companies electing to participate in this program must submit a notice of intent by June 12, 2000, and an executed partnership agreement by December 11, 2000.

**ADDRESSES:** Both the notice of intent and executed partnership agreement should be sent to: Storage Tank Emission Reduction Partnership Program, Air Enforcement Division (Mail Code 2242A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. James K. Jackson, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW Washington, DC 20460, telephone (202) 564–2002.

**SUPPLEMENTARY INFORMATION:** Slotted guidepoles are hollow poles with holes or ''slots'' that perforate the length of the pole and that are typically a foot-long and 1—2 inches wide. Where the pole passes through a floating roof, there is an opening in the roof and a gap between the pole and the roof. These holes, slots and gaps have exactly the same emissions effect as any other roof opening: they constitute a pathway for evaporative product losses and volatile organic compound (VOC) emissions. VOCs include a wide variety of hydrocarbons, some of which are hazardous air pollutants (*e.g.,* benzene, toluene, xylene and ethyl benzene). Depending on the size, location and contents of a tank, uncontrolled emissions from the use of slotted guidepoles can exceed 25,000 pounds per year. Simple and inexpensive solutions exist to minimize these emissions and reduce evaporative losses.

A substantial but undetermined number of NSPS Subpart Ka/Kb tanks have slotted guidepoles. They may be found at any facility that stores substantial quantities of volatile organic liquids, including petroleum products (*e.g.,* refineries, gasoline distribution terminals, chemical plants and other facilities). EPA previously determined and recently reaffirmed that uncontrolled slotted guidepoles do not comply with the ''no visible gap'' requirement in NSPS Subparts Ka and Kb. See 65 FR 2336 (January 14, 2000). In the interests of promoting fast, efficient and widespread emission reductions from slotted guidepoles, EPA is today offering to enter into agreements with those companies that have installed or will install controls to reduce their slotted guidepole emissions at NSPS Subpart Ka/Kb tanks.

EPA solicited public comment on a proposed program that had been developed in cooperation with the American Petroleum Institute. 65 FR 2391 (January 14, 2000). EPA discussed its proposal with State and Territorial Air Pollution Program Administrators/ Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) and received twelve comments (*e.g.,* companies, trade associations and equipment vendors), all of which supported establishing a program. The more salient features of the Storage Tank Emission Reduction Partnership Program announced today are summarized below:

- Each company intending to participate must notify EPA of its intent to participate within 60 days and there identify each facility it intends to include under this program, using its unique EPA Identification Number.
- Participating companies must assess all of their NSPS Subpart Ka/Kb external floating roof tanks with slotted guidepoles and are encouraged to assess all of their NSPS Subpart Ka/Kb internal floating roof tanks with slotted guidepoles. *See* discussion *infra.*
- Acceptable slotted guidepole controls under this program are identified. See Appendix I. Use of such controls does not affect other regulatory obligations that may exist under state or federal law (*e.g.,* to sample tank contents for compliance with other regulatory programs).
- EPA is not requiring that penalties be paid as a condition of program participation, but if a participating company fails to implement its agreed-to controls in a timely manner, stipulated penalties would be imposed.
- The terms and conditions for program participation are specified in the participation agreement that each participant must execute. See Appendix II and Appendix III.
- Each participating company must submit an executed participation agreement, including a complete Annex A, within 240 days. Annex A must provide a facility listing (using its EPA identification Number) that identifies its NSPS Subpart Ka/Kb external floating roof tanks with slotted guidepoles and those of its NSPS Subpart Ka/Kb internal floating roof tanks that it intends to include under this program. Annex A must also specify the controls that were or will be installed, as well as predict the emission reductions that will be achieved after these controls are installed.

Today's final program incorporates certain technical changes that had been recommended by commenters, but it is essentially the same as the program that had been earlier proposed. The major points raised during the comment period are summarized and discussed below.

Clarification of Facility Coverage: Some commenters expressed uncertainty as to whether participation could be on facility-by-facility or operating division-by-operating division

basis. Program participation may be on any basis so long as all NSPS Subpart Ka and Kb storage vessels with slotted guidepoles at each identified facility are included. Accordingly and to be effective, both the notice of intent to participate and Annex A to the participation agreement must separately identify each of the facilities covered by name, address and EPA Identification Number.

Additional Acceptable Control Options: Several Commenters suggested that two additional options be identified as acceptable for purposes of this program (*i.e.,* replacing slotted guidepoles with solid guidepoles and installing flexible covers over the entire slotted guidepole). Based upon the information provided, EPA believes these alternatives eliminate visible gaps and can reduce emissions to a level comparable to that achievable with a pole float system. Both alternatives are now included in Appendix I.

Although other control options may be suggested, interested parties should be aware that any such suggestion will require that showings be made, see APPENDIX–2, and that it be reviewed and approved by EPA before it can be relied upon by a participating company. To expedite EPA consideration, a complete copy of any request for an additional acceptable control option under APPENDIX I should also be sent to Sally Shaver, Director, Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

Inclusion of Internal Floating Roof Tanks: Several Commenters questioned the environmental need for installing controls on slotted guidepoles at NSPS Subpart Ka/Kb internal floating roof tanks. EPA indicated in its notice of a proposed program that the views of the Office of Air Quality Planning and Standards (''OAQPS'') had been solicited on whether to exempt these fittings from otherwise applicable requirements. EPA has concluded that such an exemption would require notice and comment rulemaking, *cf.* 65 FR 2336 (January 14, 2000). Accordingly and for purposes of this program, participating companies are encouraged (but not required) to identify NSPS Subpart Ka/Kb internal floating roof tanks. If included, participants may elect to utilize a combination of deck fitting controls as the identified acceptable control, as permitted under APPENDIX–2.

Newly Acquired Tanks: Some comments suggested that participating companies be permitted to include newly acquired tanks under this program (*e.g.,* tanks acquired after executing and entering into a partnership agreement). EPA notes that such may be possible by a consensual amendment to the partnership agreement's Annex A. Factors that will then be considered by EPA include when the tank(s) were acquired, where they are located, whether controls on the newly acquired tank(s) had been installed and, if not, when they will be installed.

Facilities with Controls Already Installed: It was suggested during the comment period that the program include simplified procedures for those facilities that previously installed identified, acceptable controls. EPA agrees. Simplified procedures are available for a facility that installed controls identified in Appendix I prior January 14, 2000 on all its NSPS Subpart Ka/Kb external floating roof tanks with slotted guidepoles. To participate, a company must submit a notice of intent to participate within 60 days and a Certification and Agreement (as specified in Appendix III) within 240 days. Upon receipt, EPA will either sign and return the Certification and Agreement or identify deficiencies which must be corrected. If corrected within 30 days, EPA will then sign and return the corrected Certification and Agreement.

EPA believes that the above-described program is an inexpensive, efficient, cost-effective way to achieve immediate environmental improvements. EPA is encouraging companies and facilities to go beyond the terms of this agreement and to reduce emissions further by installing tank fitting controls whenever and wherever possible. For example, EPA urges companies to instal controls identified in Appendix I at non-NSPS Subpart Ka/Kb storage vessels, as well as at NSPS Subpart Ka/Kb tanks that are not under this program because they are not currently subject to equipment design requirements based on the materials stored and their vapor pressure(s). In addition to obvious environmental benefits and depending on individual circumstances, such may reduce reportable emissions and fees and create emission offsets/credits.

This notice does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, 64 FR 43255 (August 10, 1999). Thus, the requirements of section 6 of the Executive Order do not apply to this notice.

Dated: April 4, 2000.

**Eric V. Schaeffer,**

*Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.*

## Appendix I

**Acceptable Controls for Slotted Guidepoles Under the Storage Tank Emissions Reduction Partnership Program**

1. *Pole Float System:* Each opening through the deck of the floating roof for a slotted guidepole shall be equipped with a deck cover, a pole wiper and a pole float. The deck cover shall also be equipped with a gasket between the cover and deck. The wiper or seal of the pole float shall be at or above the height of the pole wiper.

2. *Alternate Control Technologies and Combinations:* The following will inform EPA's determination of whether an alternate control technology is acceptable for use under the Storage Tank Emissions Reduction Partnership Program. An alternate control technology must be shown to have an emission factor less than or equal to the emission factor for the above-identified control system. Tests to determine emission factors for an alternate control technology shall accurately simulate conditions representative of the conditions under which the technology will/would operate (*e.g.,* wind, temperature and barometric pressure). Such tests may utilize the methods listed in American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part A (Wind Tunnel test Method for the Measurement of Deck-Fitting Loss Factors for External Floating-Roof Tanks) or Part E (Weight Loss Test Method for the Measurement of Deck-Fitting Loss Factors for Internal Floating-Roof Tanks). A combination of technologies and devices to control emissions from slotted guidepoles and deck fittings may be acceptable under the Storage Tank Emissions Reduction Partnership Program if such alternate emits no more than the above-identified control system plus the same combination of deck fittings (equipped as required under NSPS Subpart Kb), as determined using AP–42. The emissions from an alternate combination of control technologies and devices shall be determined using AP–42 and/or as specified above.

3. *Pole Sleeve System:* Each opening through the deck of the floating roof for a slotted guidepole shall be equipped with a deck cover, a pole wiper and a pole sleeve. The deck cover shall be equipped with a gasket between the cover and the deck. The sleeve extends into the stored liquid.

4. *Internal Sleeve Emission Control System:* An internal guidepole sleeve that eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (*e.g.,* pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

5. *Solid Guidepole System:* A solid guidepole; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (*e.g.,* pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

6. *Flexible Enclosure System:* A flexible device that complete encloses the slotted guidepole and eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (*e.g.,* pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

7. *Covers on External Floating Roof Tanks:* The external floating roof tank shall be (or have been) modified by installing a fixed roof mounted on the tank above its external floating roof. Each opening through the deck for a slotted guidepole shall have its lower edge below the surface of the stored liquid.

8. *Removal of Tank from Service and Surrender of Permits:* Remove the tank from service storing liquids subject to NSPS Ka or Kb controls, surrender any and all operating permits for that tank to the appropriate state/local regulatory authority and represent to such authority that it will not be used to store petroleum liquids, as defined in 40 CFR 60.111a(b) that have a maximum true vapor pressure in the range defined in 40 CFR 60.112a(a), or volatile organic liquids, as defined in 40 CFR 60.111b(k), that have a maximum true vapor pressure in the range defined in 40 CFR 60.112b(a).

*Definitions*

Deck cover means a device which covers an opening in a floating roof deck. Some deck covers move horizontally relative to the deck (*i.e.,* a sliding cover).

Pole float means a float located inside a guidepole that floats on the surface of the stored liquid. The rim of the float has a wiper or seal that extends to the inner surface of the pole.

Pole sleeve means a device which extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening. The sleeve extends into the stored liquid.

Pole wiper means a seal that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening.

Slotted guidepole means a guidepole or gaugepole that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

Solid guidepole means a guidepole or gaugepole that does not have slots or holes through the wall of the pole at or above the level of the floating roof when it is at its lowest operating level.

## Appendix II

**Storage Tank Emission Reduction Partnership Agreement**

The United States Environmental Protection Agency (''EPA'') and _____ (''Participating Company''), the parties herein, desire to enter into and be bound by the terms of this Storage Tank Emission Reduction Partnership Agreement (''Partnership Agreement'' or ''Agreement'').

*Whereas* Participating Company recognizes that reducing emissions from tanks and other storage vessels with slotted guidepoles [1] can improve air quality while reducing evaporative product losses.

*Whereas* Participating Company is committed to environmental improvement and the cost-effective reduction of emissions.

*Whereas* EPA recognizes the value of cooperative emission reduction programs with industry.

*Whereas* Participating Company desires to participate in the Storage Tank Emission Reduction Partnership Program announced by EPA at [Insert FR page citation and (April 13, 2000)] (hereinafter referred to as ''Program notice'').

*Now, Therefore,* in consideration of the above and the mutual undertakings of each to the other, EPA and Participating Company agree as follows:

*Applicability*

1. The provisions of this Partnership Agreement shall apply to and be binding upon EPA and upon Participating Company, its officers, directors, agents, servants, employees, successors and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any tank identified in Annex A.

*Representations*

2(a). Participating Company represents that:

a. It notified EPA of its intent to participate in the Storage Tank Emission Reduction Partnership Program within 60 days of the Program notice.

b. It assessed and evaluated all of its NSPS Subpart Ka and Kb affected facilities [2] that are subject to equipment design requirements [3] and that have slotted guidepoles [4] (hereinafter referred to as ''Tanks'') at each facility/location identified in Annex A.

c. It is submitting this executed Partnership Agreement to EPA within 240 days of the Program notice.

d. Annex A (attached hereto and incorporated by reference herein) is a true, accurate and complete identification of:

i. each Tank;

ii. the date(s) by which controls were or will be installed at each Tank, provided that if controls were installed before January 14, 2000, the year of installation may be used; and

iii. predicted emission reductions at each Tank that will instal controls hereunder.

e. The controls identified in Annex A were either specified in APPENDIX I to the Program notice (Acceptable Controls for Tanks with Slotted Guidepoles Under the Storage Tank Emission Reduction Partnership Program), attached hereto and incorporated by reference herein, or expressly determined by EPA to be acceptable for purposes of the Storage Tank Emission Reduction Partnership Program under Appendix I–2.

f. The predicted emission reductions reflected in Annex A were calculated and derived through the proper use of either EPA's TANKS software (version 3.1 or later) or an alternative methodology expressly determined to be acceptable for this purpose by EPA.

g. The undersigned is a duly authorized representative of Participating Company, with full powers to make these representations, enter into this Agreement and bind Participating Company to the terms hereof.

(b). The undersigned EPA representative is authorized to enter into this Agreement and bind EPA to the terms hereof.

*Participating Company Undertakings*

3. Participating Company shall install slotted guidepole controls on Tanks identified in Annex A as expeditiously as possible (*e.g.,* when the Tank is next taken out of service) but not later than:

a. Twenty-six (26) months after issuance of the Program notice; or

b. One hundred and twenty months (120) of the Program notice if a Tank must be taken out of service in order to instal such controls, provided Annex A describes why such Tank(s) must be taken out of service and either identifies the date(s) by which appropriate interim controls will be installed (*i.e.,* a self-aligning float equipped with at least one wiper seal gasket that is maintained at or above the height of the pole wiper) or describes why such Tank(s) must be taken out of service in order to instal interim controls.

4. Participating Company shall properly operate and maintain all slotted guidepole controls required under Paragraph 3 in the manner specified in Attachment 1 and shall include such controls and this requirement

[1] A guidepole (also referred to as a gaugepole, gauge pipe or stilling well) is a vertically oriented pipe or tube that is affixed to a tank and that passes through its floating roof. Slotted guidepoles are guidepoles with slots or holes that allow stored liquids to flow into the pole, thereby enabling representative samples to be collected from within the slotted guidepole.

[2] NSPS Subpart Ka affected facilities are petroleum liquid storage vessels with a capacity of greater than 40,000 gallons that were constructed, reconstructed or modified after May 18, 1978, 40 CFR 60.110a; NSPS Subpart Kb affected facilities are volatile organic liquid storage vessels with a capacity of greater than 40 cubic meters that were constructed, reconstructed or modified after July 23, 1984, 40 CFR 60.110b.

[3] The equipment design requirements for floating roof tanks apply only to certain NSPS Subpart Ka and Kb affected facilities. See 40 CFR 60.112a and 60.112b.

[4] A slotted guidepole is a guidepole (or gaugepole) that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

in federally enforceable permits issued by appropriate permitting authorities.

5. Participating Company shall not seek or obtain emission reduction credits for emission reductions that result from installing slotted guidepole controls under Paragraph 3 or from the work required under Paragraph 4 of this section, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

6. Participating Company agrees and by entering into this Agreement consents to EPA's issuance of an order under and as specified in Paragraph 9.

*EPA Undertakings*

7. Compliance with the requirements set forth herein, including Paragraphs 3–6, shall be deemed and will, therefore, constitute full settlement and satisfaction by EPA of those violations of the Standards of Performance for New Sources, Subparts Ka and Kb, that could be or could have been alleged in civil actions or proceedings brought by EPA or the United States concerning Participating Company's use of slotted guidepoles at Tanks identified in Annex A.

8. Within sixty (60) days of its receipt of this Partnership Agreement, EPA will promptly review and either sign and return a fully executed copy of that Agreement to Participating Company or identify deficiencies in Annex A. If deficiencies identified by EPA are not corrected and a revised Annex A is not submitted within thirty (30) days of Participating Company's receipt of such identification by EPA, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

9. If and after EPA executes this Agreement as specified in Paragraph 8, it will issue an order to Participating Company in the form provided at Attachment 2.

*Publicity*

10. Participating Company may publicize that it is partnering with EPA under the Storage Tank Emission Reduction Partnership Program.

11. Upon request, EPA will recognize and acknowledge Participating Company's participation under this Partnership Program and/or industry's leadership and assistance in identifying controls for slotted guidepoles.

*Access and Inspection*

12. Without prior notice, any authorized representative of EPA (including a designated contractor), upon presentation of credentials where Tanks are located, may enter such location(s) at reasonable times to determine compliance with the requirements, terms and conditions of this Agreement. To make such a determination, EPA's authorized representative(s) shall have full and complete access to inspect, photograph, or videotape any Tank and to copy such records related to Participating Company's undertakings under this Agreement that EPA's representative(s) may deem necessary, provided such is consistent with EPA's authority under applicable laws, permits and regulations. Access under this Paragraph is subject to the normal health and safety requirements in effect at such locations. This Paragraph is in addition to, and not in limitation of, EPA's authority to investigate, inspect or enter premises pursuant to applicable laws, permits and regulations.

*Force Majeure*

13. If any event occurs that causes or may cause a delay in Participating Company's compliance with Paragraphs 3 or 4 of this Agreement, Participating Company shall notify EPA within thirty (30) days after Participating Company becomes aware of such event. This notice shall reasonably describe the anticipated length of the delay, the reason(s) for the delay, measures Participating Company has taken and will take to prevent or minimize the delay, and the timetable by which these measures have been or will be implemented. Increased costs or expenses associated with the implementation of this Agreement shall not be the sole or primary basis for a change in its terms or an extension of time. Participating Company shall adopt reasonable measures to avoid or minimize any such delay.

14. If the parties agree that the delay or anticipated delay in compliance with Paragraph 3 of this Agreement has been or will be caused by circumstances beyond the reasonable control of Participating Company and its contractors as under Paragraph 20, the time for performance hereunder shall be extended for a period no longer than the length of the delay caused by such circumstances. The parties shall also then seek to agree on the period of such extension as under Paragraph 20, but if they cannot so agree, the determination by EPA shall control unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

15. If EPA determines that such delay, anticipated delay or any identified portion thereof was caused by circumstances within the reasonable control of Participating Company and its contractors, Participating Company shall be in breach of this Agreement and subject to stipulated noncompliance penalties as set forth in Paragraph 16 unless Participating Company invokes the Dispute Resolution provisions of this Agreement (Paragraphs 20–21).

*Stipulated Noncompliance Penalties*

16. If Participating Company fails to comply with the requirements of Paragraphs 3 (including Annex A), 4 or 5, it shall pay up to $1,000 per day for the first thirty (30) days of noncompliance and up to $2,500 per day for each day of noncompliance thereafter until compliance is demonstrated. Stipulated penalties are to be determined for each Tank, provided that stipulated penalties for all noncompliance occurring on the same day shall not exceed $10,000 per facility at which such noncompliance exists or occurs and $25,000 per participating company. Payment of stipulated penalties shall be by cashier's check, certified check or wire transfer, payable to ''Treasurer, United States of America'' and delivered to EPA.

17(a). If any noncompliance with Paragraphs 3, 4 or 5 is discovered by Participating Company, it shall so notify EPA and provide a written statement describing such noncompliance by the last day of the month following the month in which such noncompliance was identified by Participating Company.

(b). If any noncompliance with Paragraphs 3, 4 or 5 is discovered by EPA, it shall so notify Participating Company and there describe such noncompliance.

18. After an opportunity to informally resolve issues under Paragraph 20, EPA will demand payment of such stipulated penalties as it determines are appropriate under the circumstance and permitted under Paragraph 16. Stipulated penalties shall be paid by the last day of the month following the month in which such demand is made unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

19. For any noncompliance that is or could be subject to stipulated noncompliance penalties hereunder, EPA expressly reserves the right to seek any other relief to which it may be entitled under law, including but not limited to specific performance of this Agreement, injunctive relief under the Act and such other relief as may be available under any federal statute or the common law.

*Dispute Resolution*

20. *Informal.* If Participating Company disputes any determination made by EPA pursuant to Paragraphs 14–15 (Force Majeure), Paragraph 18 (Stipulated Noncompliance Penalties), Paragraphs 32–33 (Termination) or Appendix I (Alternate Control Technologies) but only if such alternate was requested by Participating Company, it shall send a written notice to EPA outlining the nature of the dispute/disagreement and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the notice was received unless the parties expressly agree otherwise in writing.

21. *Formal.* If informal negotiations are unsuccessful, either party may request and both parties shall then attempt to reach agreement on a process and procedure for resolving the dispute by formal means using a neutral third party. Such process and procedures may include, but need not be limited to, mediation, nonbinding arbitration and binding arbitration (but only if and to the extent binding arbitration is then authorized and expressly permitted by EPA policy and the Administrative Dispute Resolution Act of 1996). If an agreement on process and procedure is not reached within sixty (60) days from the date notice was received under Paragraph 20 or as otherwise provided in this Agreement, either party may then assert whatever rights they may have hereunder in an appropriate federal court.

*Notification*

22. All notices, records and submissions required under this Agreement shall be maintained where each Tank is located or where such Tank's records are normally maintained, provided they can be made

available by facsimile (or otherwise) upon request during an inspection under Paragraph 12.

23. All notices, submissions and certifications required of Participating Company under this Agreement shall be in writing and postmarked or hand delivered to: U.S. Environmental Protection Agency, Storage Tank Emission Reduction Partnership Program, Air Enforcement Division—Station Source Enforcement Branch, Mail Code 2242A, Washington, DC 20460.

All notices required of EPA and all EPA determinations under this Agreement shall be in writing and postmarked or hand delivered to:

_____
_____
_____

24. Upon completion of its obligations and undertakings under this Agreement, Participating Company shall provide a written certification of its compliance with this Agreement to EPA, including a description of the work performed under Paragraph 3, the date such work was completed and an identification of such permit(s) that were or will be issued under Paragraph 4. Such certification shall be signed by a responsible official and contain the following language:

I certify under penalty of law that the information contained in and accompanying this document (if applicable) is true, accurate, and complete to the best of my knowledge, information and belief after reasonable inquiry.

For purposes of this Paragraph, a ''responsible official'' means the president, secretary, treasurer, or a vice-president of Participating Company, its senior management representative(s) where such Tanks are located, or any person who performs similar policy or decision-making functions for Participating Company.

*Miscellaneous Provisions*

25. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

_____
_____
_____
_____

EPA agrees to accept service from Participating by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

_____
_____
_____
_____

26. Annex A of this Participation Agreement may be modified only if EPA and Participating Company agree and consent to such modification in writing.

27. This Agreement does not modify or affect in any way Participating Company's responsibility to achieve and maintain compliance with all other applicable federal, state and local laws, regulations and permits.

28. Each party shall bear its own costs, attorney's fees and disbursements in this matter.

29. This document, including its attached Annex A, Appendix I and Attachments 1 and 2, encompasses the entire agreement of the parties with respect to the subject matter hereof and totally supersedes all prior agreements and understandings, whether oral or in writing.

*Termination*

30. When Participating Company has complied with Paragraph 3, is in compliance with Paragraph 4 and has certified compliance under Paragraph 24, Participating Company may notify EPA of its intent to terminate this Agreement. EPA may object to such termination only on the grounds that Participating Company has not complied with this Agreement.

31. If EPA does not object to Participating Company's notice of intent to terminate, this Agreement will terminate ninety (90) days after the date of EPA's receipt of such notice of intent to terminate. Notwithstanding such termination of this Participation Agreement, the obligations of Paragraphs 3, 4, 5 and 7 shall continue indefinitely.

32. If EPA objects to Participating Company's notice of intent to terminate, it must do so in writing within sixty (60) days of its receipt of such notice. If EPA objects to Participating Company's notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20–21). In resolving any dispute regarding termination of this Agreement, Participating Company shall have the burden of proving that it is, was and has been in compliance with this Agreement.

33. If EPA determines that Participating Company is in material breach of this Agreement (*e.g.,* evinces a pattern and practice of noncompliance with its terms and conditions), it shall give notice of such breach and may give notice of its intent to terminate this Agreement. If Participating Company objects to EPA's determination and/or notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20–21). If then terminated, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

*Reservation of Rights*

34. By entering into the Agreement, EPA understands that Participating Company neither agrees nor concedes that its use of slotted guidepoles without the controls specified in Appendix I violate or violated any Clean Air Act requirement. Similarly, Participating Company understands that EPA neither agrees nor concedes that Participating Company's prior use of slotted guidepoles without such controls was acceptable or excused in any way or on any basis whatsoever. With respect to any tank(s) other than a Tank identified in Annex A, each party reserves all rights they may have to contest or otherwise litigate any issue arising out of any use of slotted guidepoles.

*Effective Date*

35. This Participation Agreement shall be effective when signed by both Participating Company and EPA.

By _____
[Participating Company]
Date: _____
By: _____
U.S. Environmental protection agency.
Date: _____

*Attachment 1*

Operating and Maintenance Requirements for Slotted Guidepole Controls Under the Storage Tank Emissions Reduction Partnership Program

The sliding cover shall be in place over the slotted-guidepole opening through the floating roof at all times except when the sliding cover must be removed for access. If the control technology used includes a guidepole float, the float shall be floating within the guidepole at all times except when it must be removed for access to the stored liquid or when the tank is empty.

Visually inspect the deck fitting for the slotted guidepole at least once every 10 years and each time the vessel is emptied and degassed. If the slotted guidepole deck fitting or control devices have defects, or if a gap of more than 0.32 centimeters (1/8 inch) exists between any gasket required for control of the slotted guidepole deck fitting and any surface that it is intended to seal, such items shall be repaired before filling or refilling the storage vessel with regulated material.

Tanks taken out of hydrocarbon service, for any reason, do not have to have any controls in place during the time they are out of service.

*Attachment 2*

Form Compliance Order

**United States Environmental Protection Agency**

In the Matter of: [Participating Company] Respondent.

Storage Tank Emission Reduction Partnership Program, Agreement No. ____

*Findings and Order*

Pursuant to Section 113(a)(3) of the Clean Air Act (''CAA''), consistent with the Storage Tank Emission Reduction Partnership Agreement identified above and entered into between the United States Environmental Protection Agency (''EPA'') and Respondent, and based upon available information, EPA hereby makes and issues the following Findings and Order:

*Findings*

1. Respondent is a Participating Company under above-identified Storage Tank Emission Reduction Partnership Agreement.

2. EPA promulgated New Source Performance Standards (''NSPS'') for Petroleum Liquid Storage Vessels and for Volatile Organic Liquid Storage Vessels, appearing in 40 CFR Part 60, Subparts Ka and Kb.

3. Respondent owns or operates certain ''affected facilities'' under NSPS Subpart Ka and/or Kb that have or had floating roofs with slotted guidepoles, as identified in Annex A.

*Order*

4. Respondent shall install, maintain and operate properly those controls specified in Annex A by the date(s) there indicated and shall include or seek to include such controls and this requirement in federally enforceable permits issued by appropriate permitting authorities.

5. Respondent shall not seek or obtain emission reduction credits for emission reductions that result from its compliance with this order, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

6. Pursuant to Section 113(a) of the CAA, failure to comply with this Order may lead to a civil action to obtain compliance or an action for civil or criminal penalties.

Issued this _____ day of _____, 2000.

U.S. Environmental Protection Agency.

## Appendix III

**Storage Tank Emission Reduction Partnership Certification and Agreement**

*CERTIFICATION*

_____ (''Participating Company''), by _____, a responsible corporate official of Participating Company, certifies that:

1. Participating Company notified the United States Environmental Protection Agency (''EPA'') of its intent to participate in the Storage Tank Emission Reduction Partnership Program within 60 days of the Program notice announced at [insert FR page citation (April 13, 2000)].

2. Participating Company assessed and evaluated all of its NSPS Subpart Ka and Kb affected facilities [1] that are subject to equipment design requirements [2] and that have slotted guidepoles [3] (hereinafter referred to as ''Tanks'') at each facility/location identified in Annex A.

3. Annex A (attached hereto and incorporated by reference herein) is a true, accurate and complete identification of:

i. each Tank; and

ii. the year in which controls were installed at each Tank; and

4. The controls identified in Annex A were either specified in APPENDIX I to the Program notice (Acceptable Controls for Tanks with Slotted Guidepoles Under the Storage Tank Emission Reduction Partnership Program), attached hereto and incorporated by reference herein, or expressly determined by EPA to be acceptable for purposes of the Storage Tank Emission Reduction Partnership Program under APPENDIX I–2.

I certify under penalty of law that the foregoing and the attached, including Annex A, is true, accurate, and complete to the best of my knowledge, information and belief after reasonable inquiry.

_____

[NAME]

[TITLE]

*Agreement*

The United States Environmental Protection Agency (''EPA'') and _____ (''Participating Company''), the parties herein, desire to enter into and be bound by the terms of this Storage Tank Emission Reduction Partnership Agreement (''Partnership Agreement'' or ''Agreement'').

*Whereas* Participating Company recognizes that reducing emissions from tanks and other storage vessels with slotted guidepoles [1] can improve air quality while reducing evaporative product losses.

*Whereas* Participating Company is committed to environmental improvement and the cost-effective reduction of emissions.

*Whereas* EPA recognizes the value of cooperative emission reduction programs with industry.

*Whereas* Participating Company desires to participate in the Storage Tank Emission Reduction Partnership Program announced by EPA at 65 FR [insert 1st page number of FR this notice appears in] (April 13, 2000) (hereinafter referred to as ''Program notice'').

*Whereas* Participating Company certified that it had complied with the requirements of the Storage Tank Emission Reduction Partnership Program.

*Now, therefore,* in consideration of the above and the mutual undertakings of each to the other, EPA and Participating Company agree as follows:

*Applicability*

1. The provisions of this Partnership Agreement shall apply to and be binding upon EPA and upon Participating Company, its officers, directors, agents, servants, employees, successors and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any tank identified in Annex A.

*Representations*

2(a). Participating Company represents that:

a. Participating Company's Certification was made by a ''responsible official'' (*i.e.,* the president, secretary, treasurer, or a vice-president of Participating Company, Participating Company's senior management representative(s) where such Tanks are located, or any other person who performs similar policy or decision-making functions for Participating Company.

b. The undersigned is a duly authorized representative of Participating Company, with full powers to make these representations, enter into this Agreement and bind Participating Company to the terms hereof.

(b). The undersigned EPA representative is authorized to enter into this Agreement and bind EPA to the terms hereof.

*Participating Company Undertakings*

3. Participating Company shall properly operate and maintain all slotted guidepole controls identified on Annex A in the manner specified in Attachment 1 and shall include such controls and this requirement in federally enforceable permits issued by appropriate permitting authorities.

4. Participating Company shall not seek or obtain emission reduction credits for emission reductions that result from installing slotted guidepole controls or from the work required under Paragraph 3 of this section, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

*EPA Undertakings*

5. Compliance with the requirements set forth herein shall be deemed and will, therefore, constitute full settlement and satisfaction by EPA of those violations of the Standards of Performance for New Sources, Subparts Ka and Kb, that could be or could have been alleged in civil actions or proceedings brought by EPA or the United States concerning Participating Company's use of slotted guidepoles at Tanks identified in Annex A.

6. Within sixty (60) days of its receipt of this Partnership Agreement, EPA will promptly review and either sign and return a fully executed copy of that Agreement to Participating Company or identify deficiencies in Annex A. If deficiencies identified by EPA are not corrected and a revised Annex A submitted within thirty (30) days of Participating Company's receipt of such identification by EPA, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

*Miscellaneous Provisions*

7. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to or arising under this Agreement at the address listed below:

_____

_____

_____

_____

[1] NSPS Subpart Ka affected facilities are petroleum liquid storage vessels with a capacity of greater than 40,000 gallons that were constructed, reconstructed or modified after May 18, 1978, 40 CFR 60.110a; NSPS Subpart Kb affected facilities are volatile organic liquid storage vessels with a capacity of greater than 40 cubic meters that were constructed, reconstructed or modified after July 23, 1984, 40 CFR 60.110b.

[2] The equipment design requirements for floating roof tanks apply only to certain NSPS Subpart Ka and Kb affected facilities. See 40 CFR 60.112a and 60.112b.

[3] A slotted guidepole is a guidepole (or gaugepole) that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

[1] A guidepole (also referred to as a gaugepole, gauge pipe or stilling well) is a vertically oriented pipe or tube that is affixed to a tank and that passes through its floating roof. Slotted guidepoles are guidepoles with slots or holes that allow stored liquids to flow into the pole, thereby enabling representative samples to be collected from within the slotted guidepole.

8. Annex A of this Participation Agreement may be modified only if EPA and Participating Company agree and consent to such modification in writing.

9. This Agreement does not modify or affect in any way Participating Company's responsibility to achieve and maintain compliance with all other applicable federal, state and local laws, regulations and permits.

10. Each party shall bear its own costs, attorney's fees and disbursements in this matter.

11. This document, including its Annex A, encompasses the entire agreement of the parties with respect to the subject matter hereof and totally supersedes all prior agreements and understandings, whether oral or in writing.

*Reservation of Rights*

12. By entering into the Agreement, EPA understands that Participating Company neither agrees nor concedes that its use of slotted guidepoles without the controls specified in Appendix I violate or violated any Clean Air Act requirement. Similarly, Participating Company understands that EPA neither agrees nor concedes that Participating Company's prior use of slotted guidepoles without such controls was acceptable or excused in any way or on any basis whatsoever. With respect to any tank(s) other than a Tank identified in Annex A, each party reserves all rights they may have to contest or otherwise litigate any issue arising out of any use of slotted guidepoles.

*Effective Date*

13. This Participation Agreement shall be effective when signed by both Participating Company and EPA.

By:_____
[Participating Company]
Date:_____
By:_____
U.S. Environmental Protection Agency
Date:_____

*Attachment 1*

Operating and Maintenance Requirements for Slotted Guidepole Controls Under the Storage Tank Emissions Reduction Partnership Program

The sliding cover shall be in place over the slotted-guidepole opening through the floating roof at all times except when the sliding cover must be removed for access. If the control technology used includes a guidepole float, the float shall be floating within the guidepole at all times except when it must be removed for access to the stored liquid or when the tank is empty.

Visually inspect the deck fitting for the slotted guidepole at least once every 10 years and each time the vessel is emptied and degassed. If the slotted guidepole deck fitting or control devices have defects, or if a gap of more than 0.32 centimeters (1/8 inch) exists between any gasket required for control of the slotted guidepole deck fitting and any surface that it is intended to seal, such items shall be repaired before filling or refilling the storage vessel with regulated material.

Tanks taken out of hydrocarbon service, for any reason, do not have to have any controls in place during the time they are out of service.

[FR Doc. 00–9091 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6578–7]**

### Lyman Dyeing and Finishing Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into a settlement for the partial reimbursement of past response costs with Springs Industries, Inc. pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Lyman Dyeing and Finishing Superfund Site (Site) located in Lyman, Spartanburg County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887. Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: March 29, 2000.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 00–9237 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 92–237; DA 00–734]**

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On April 7, 2000, the Commission released a public notice announcing the April 25 and 26, 2000, meeting and agenda of the North American Numbering Council (NANC). For reasons described below, a portion of the meeting will be closed to the public on Wednesday, February 23, from 8:30 a.m. until 11 a.m. The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** Released: April 7, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, April 25, 2000, from 8:30 a.m. until 5:00 p.m., and on Wednesday, April 26, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW, Room TW–C305, Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

**Proposed Agenda—Tuesday, April 25, 2000**

1. Approval of March 21–22, 2000 meeting minutes.

2. Review FCC Numbering Resource Optimization Report and Order and Further Notice of Proposed Rulemaking, CC Docket 99–200, released March 31, 2000.

A. NANC action items: Uniform definitions for secondary categories of number usage within 120 days (paragraphs 14 and 36). Work with NANP administration to develop reporting form within 15 days

(paragraph 52); data entry mechanisms within 45 days (paragraph 53); criteria to determine inconsistent submissions (paragraph 54), and cost estimates within 30 days (paragraph 56). Revisions to Pooling Administrator Requirements to specific technical requirements within 90 days (paragraph 155). Further study of individual telephone number pooling (ITN) and unassigned number porting (paragraph 231.

B. Rejected NANC recommendations. Two 90-day reservation periods (paragraph 24); reconsider fees for reserved numbers (paragraph 25), and revise INC guidelines to reflect 6-month inventories (paragraph 189).

C. Further Notice of Proposed Rulemaking items: Utilization threshold (paragraph 248); CMRS participation in number pooling (paragraph 25), and revise INC guidelines to reflect 6-month inventories (paragraph 189).

D. Issues not addressed: Audits; rate center consolidation; 10 digit dialing, and technology specific overlays.

3. North American Number Plan Administration (NANPA) Report.

4. Assumptions Issue Management Group (IMG) tutorial on NANP Expansion and the Uniform Dialing Plan.

5. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update. Midwest LLC merger, and status of NeuStar negotiations.

6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

7. Numbering Resource Optimization (NRO) Working Group Report.

8. Local Number Portability Administration (LNPA) Working Group Report. Updates on wireless wireline integration; Problem Identification Management (PIM); NPAC/SMC release status, and Slow Horse.

9. Cost Recovery Working Group Report.

**Wednesday, April 26, 2000**

10. Steering Group Report.

11. Industry Numbering Committee Report.

12. Number Pooling IMG Report. Inventories in jeopardy discussion.

13. North American Numbering Plan Administration Billing and Collection Agent (NBANC) Report.

14. Public Participation (5 minutes each, if any).

15. Other Business.

16. Action Items and Decisions Reached.

Federal Communications Commission.

**Diane Griffin Harmon,**

*Deputy Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 00–9333 Filed 4–12–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 27, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Henry E. Blake Family; Caroline H. Blake; James H. Blake; Jean B. Blake; Violet H. Howell; William D. Blake (both individually and as trustee for the Blake William Henry Trust); Catherine L. Morris and Stephen D. Morris (both individually and in their capacity as trustees for the Ellen Elizabeth Morris Trust, the Jane Holloway Morris Trust, the Lee Edward Morris Trust, and the Justin Henry Morris Trust); Catherine M. Ryland (both individually and in her capacity as trustee for the Isabelle Burnum Ryland Trust and the Catherine G. Ryland Trust); Caroline B. Faris (in her capacity as trustee for the Stephen Hardtner Faris Trust and the Philip Lyman Faris Trust); and John Ryland; to retain voting shares of First National Bancshares of Louisiana, Alexandria, Louisiana, and thereby indirectly acquire voting shares of Security First National Bank, Alexandria, Louisiana.

Board of Governors of the Federal Reserve System, April 7, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–9143 Filed 4–12–00; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at 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 May 8, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. United Financial Holdings Corporation,* Lisle, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of United Community Bank of Lisle, Lisle, Illinois (in organization).

Board of Governors of the Federal Reserve System, April 7, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–9141 Filed 4–12–00; 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/.

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 April 27, 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 Industrial Bank of Japan, Limited, Tokyo, Japan; to acquire Nomura IBJ Global Investment Advisors, Inc., New York, New York, and thereby to engage in domestic investment advisory activities through Nomura IBJ Global Investment Advisors, Inc., a joint venture with Nomura Securities Co., Ltd, Tokyo, Japan, pursuant to Section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, April 7, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–9142 Filed 4–12–00; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Advisory Committee on Online Access and Security

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of meeting on April 28, 2000.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. sec. 10(a)(2), and 16 CFR 16.9(a), notice is hereby given that the Federal Trade Commission Advisory Committee on Online Access and Security will hold a meeting on Friday, April 28, 2000, from 8:00 a.m. to 4:00 p.m. in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The meeting is open to the public and will include a period for public comment. The purpose of the Advisory Committee is to provide advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them, and maintaining adequate security for that information. Interested parties may submit comments concerning any matter to be considered at the meeting by following the procedures described below.

**DATES:** The Advisory Committee will meet on Friday, April 28, 2000, from 8 a.m. to 4 p.m.

**ADDRESSES:** The meeting will take place in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Allison I. Brown, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3079, email aibrown@ftc.gov; or Ellen R. Finn, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3296, email efinn@ftc.gov.

**Authority:** 15 U.S.C. 41 *et seq.*; 5 U.S.C. App. secs. 1–15; 16 C.F.R. Part 16.

The fourth meeting of the Federal Trade Commission Advisory Committee on Online Access and Security will be held on Friday, April 28, 2000, in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC from 8 a.m. to 4 p.m.

The Advisory Committee will continue to consider the costs and benefits, to both consumers and businesses, of implementing the fair information practices of access and security with respect to personal information collected for and about consumers online. The Advisory Committee will also continue consideration of the parameters of reasonable access to personal information and adequate security and will present options for implementation of these information practices in a report to the Commission.

The tentative agenda for the fourth meeting is as follows:

1. Administrative matters.
2. Discussion of draft report submitted by subgroups on issues relating to ''reasonable access''.
3. Discussion of draft report submitted by subgroup on issues relating to ''adequate security''.
4. Public Comment.
5. Discussion of tasks and assignments.

The meeting is open to the public.

**Submission of Documents:**

Interested parties who wish to submit comments on the meeting agenda or questions for consideration by the Advisory Committee should send an original and two copies in advance of the meeting to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. All comments and questions should be captioned—Advisory Committee on Online Access and Security '' Comment, P004807.'' To enable prompt review and public access, paper submissions should be accompanied by a version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the submitter, the Advisory Committee caption, and the name and version of the word processing program used to create the document.

Alternatively, comments or questions may be submitted to the following email address: advisorycommittee@ftc.gov; if submitted by email, only one copy of the comment or question is required. The email should contain the name of the submitter, the Advisory Committee caption, and, if a document is attached, the name and version of the word processing program used to create the document.

Comments to the Advisory Committee will be accepted through 5 p.m. Eastern time on April 28, 2000. To ensure that comments are processed properly, individuals submitting comments should be sure to use the above addresses. All comments will be posted on the Advisory Committee's Web page at www.ftc.gov/acoas as soon as

reasonably possible, and likely within 5 business days of receipt. Individuals submitting comments should check the Advisory Committee's Web page to confirm receipt of the comment.

By direction of the Commission.

**Donald S. Clark,**

*Secretary of the Commission.*

[FR Doc. 00–9265 Filed 4–12–00; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary; Office of Minority Health

### Notice of a Cooperative Agreement With the ASPIRA Association, Inc.

**AGENCY:** Office of the Secretary, Office of Minority Health, HHS.

**ACTION:** Notice of a cooperative agreement with the ASPIRA Association, Inc.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the ASPIRA Association, Inc. (ASPIRA). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to assist the national association in expanding and enhancing its activities relevant to education, health promotion, disease prevention, and family and youth violence prevention, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

**Authority:** This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

*Background:* Assistance will continue to be provided to ASPIRA. During the last three years, ASPIRA has successfully demonstrated the ability to work with health agencies on mutual education, service, and research endeavors. The ASPIRA is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It has developed, expanded, and managed an infrastructure to coordinate and implement various educational programs within local communities and organizations that deal extensively with Hispanic issues. These programs provide a foundation upon which to develop, promote, and manage education and health-related programs aimed at preventing and reducing unnecessary morbidity and mortality among Hispanic populations.
- It has established itself and its members as a national association with professionals who serve as leaders and experts in planning, developing, implementing, and promoting educational and policy campaigns (locally and nationally) aimed at reducing adverse health behaviors and improving the Hispanic community's overall educational and social well being.
- It has assessed and evaluated data, through its Institute for Policy Research and its National Health Careers Program, on the current education, violence, and health-related findings relevant to Hispanics and other populations for dissemination to its associate members, collaborators, funders, and the general public.
- It has developed a national association whose members consist of professionals with excellent performance records and established linkages to the Hispanic population at the national and local level.
- It has developed an information management system to track programmatic outcomes and evaluate best practices for future dissemination.
- It has an inventory of critical knowledge, skills, and abilities related to serving Hispanic clients on a range of health and social problems.

This cooperative agreement will be continued for an additional 5-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Where To Obtain Additional Information**

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

**OMB Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: March 30, 2000.

**Nathan Stinson, Jr.,**

*Deputy Assistant Secretary for Minority Health.*

[FR Doc. 00–9147 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–17–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Minority Health; Availability of Funds for Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities

**AGENCY:** Office of the Secretary, Office of Minority Health, HHS.

**ACTION:** Notice of availability of funds and requests for applications for Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities.

**Authority:** This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended by Public Law 105–392.

**Purpose**

The purpose of the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities is to stimulate and foster the development of effective and durable service delivery capacity for HIV prevention and treatment among organizations closely interfaced with the minority populations highly impacted by HIV/AIDS. The grantee will identify minority community-based organizations (CBOs) and small, non-federally funded minority CBOs that are well linked with minority populations highly affected by HIV/AIDS, and which have recognized needs and/or gaps in their capacity to provide HIV/AIDS-related prevention and care services. The goals are to:

- Provide administrative and programmatic technical assistance to enable those organizations to enhance their delivery of necessary services; and
- Assist those CBOs, through an ongoing mentoring relationship, in the development of their capacity as fiscally viable and programmatically effective

organizations thereby allowing them to successfully compete for federal and other resources.

This program is intended to demonstrate the impact of technical assistance and capacity development on improving HIV prevention and care among organizations within a circumscribed area in which many minority individuals are in need of HIV/AIDS prevention and/or treatment services. To the extent that selected services such as substance abuse treatment and public health are available within the circumscribed area, linkages with these services will be fostered as part of the technical assistance. The program intends to address HIV/AIDS issues within the context of related socio-economic factors and contribute to overall community empowerment by strengthening indigenous leadership and organizations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity to eliminate health disparities and increase quality and years of healthy life. This announcement relates to 4 of the 28 focus areas established by Healthy People 2010: (1) Substance abuse; (2) educational and community-based programs; (3) HIV; and (4) sexually transmitted diseases. Potential applicants may access Healthy People 2010 documents online at *http://www.health.gov/healthypeople/.* A CD-ROM containing the Healthy People objectives for 2010 may be obtained by calling 1–800–367–4725.

**Background**

The Office of Minority Health's (OMH) mission is to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help to address the health disparities and gaps. Consistent with its mission, the role of OMH is to serve as the focal point within the Department for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with this mission, OMH launched the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities in fiscal year (FY) 1999 to assist in addressing the HIV/AIDS issues facing minority communities in 15 eligible metropolitan statistical areas. This program is based on the hypothesis that providing technical assistance and capacity development to organizations closely linked with the minority populations highly impacted by the disease, will improve their capacity to better serve minority populations with HIV/AIDS prevention and treatment. It is anticipated that this approach will strengthen existing minority CBOs and inexperienced organizations in addressing this health issue by developing and expanding their technical skills and infrastructure capacity. In FY 2000, additional funds are being made available to increase the number of organizations participating in the program. Applicants are encouraged to establish linkages with other federally funded programs supporting HIV/AIDS prevention and care to maximize these efforts.

*Disproportionate Effect of HIV/AIDS on Minorities*

Statistics indicate that although advances have been made in the treatment of HIV/AIDS, this epidemic continues as a significant threat to the public health of the United States (U.S.). Despite showing a decline in the past two years, it remains a disproportionate threat to minorities. While African-Americans and Hispanics respectively represent approximately 13% and 10% of the U.S. population, approximately 36% of the more than 640,000 reported total AIDS cases are African-American and 18% are Hispanic.

In 1997, more African-Americans were reported with AIDS than any other racial/ethnic group. Of the total AIDS cases reported that year, 45% (27,075) were reported among African-Americans, 33% (20,197) were reported among whites, and 21% (12,466) were reported among Hispanics. Among women and children with AIDS, African-Americans have been especially affected, representing 60% of all women reported with AIDS in 1997 and 62% of reported pediatric AIDS cases in 1997. During 1997, the rate of new AIDS cases per 100,000 population in the U.S. was 83.7 among African-Americans, 37.7 among Hispanics, 10.4 among whites, 10.4 among American Indians/Alaska Natives, and 4.5 among Asians/Pacific Islanders.

Data from a recent Centers for Disease Control and Prevention study (Trends in the HIV and AIDS Epidemic, 1998) comparing HIV and AIDS diagnoses in 25 states with integrated reporting systems provide a clearer picture of recent shifts in the epidemic. The study indicates that many of the new HIV diagnoses are occurring among African-Americans, women, and people infected heterosexually, with an increase also observed among Hispanics. During the period from January 1994 through June 1997, African-Americans represented 45% of all AIDS diagnoses, but 57% of all HIV diagnoses. Among young people (ages 13 to 24) diagnosed with HIV, 63% were among African-Americans and 5% were among Hispanics. Although some of the states with large Hispanic populations did not have integrated HIV/AIDS reporting and could not be included in this study, HIV diagnoses among Hispanics increased 10% between 1995 and 1996.

**Eligible Applicants**

The following public and private, nonprofit entities are eligible to apply for this grant: (a) A community coalition consisting of at least three discrete organizations with either a minority CBO or state/local health department as the lead organization; (b) a minority CBO; or (c) a state/local health department. (See definitions of Community Coalition and Minority Community-Based Organization found in this announcement.) The applicant must provide the necessary administrative infrastructure to receive and appropriately manage the federal funds. The coalition may also incorporate other partners such as a hospital, a minority health management group, an AIDS Service Organization, or other CBOs with strong links to the target population.

Fifteen Metropolitan Statistical Areas (MSAs) were identified in FY 1999 as having the highest incidence of AIDS cases reported for 1996 and 1997. According to the Centers for Disease Control and Prevention's HIV/AIDS Surveillance Report for 1999, these same 15 MSAs continue to be identified as having the highest cumulative total of AIDS cases reported for the four years, 1996–1999. Last year, funds were available to support 4 of the 15 MSAs through this program: Chicago, IL; Miami, FL; New York, NY; and San Juan, PR. For FY 2000, the program will focus on the remaining 11 MSAs in order to maximize limited resources available this fiscal year.

Eligible applicants must be located in one of the remaining 11 MSAs. Specifically, the 11 MSAs are:

- Atlanta, GA
- Baltimore, MD
- Boston, MA
- Dallas, TX
- Ft. Lauderdale, FL
- Houston, TX
- Los Angeles, CA
- Newark, NJ
- Philadelphia, PA
- San Francisco, CA
- Washington, DC

National organizations, universities and institutions of higher education are

not eligible to apply, although they may be members of the coalition. Local affiliates of national organizations which meet the definition of a minority community-based organization, however, are eligible.

**Project Requirements**

The applicant must propose to conduct a model program within the eligible metropolitan statistical area which is designed to carry out the following functions:

(1) Identify the existing capacity for delivering HIV-related services (both HIV prevention and treatment) to minority populations and compare this with available HIV/AIDS surveillance data. The use of geographic information systems and related techniques should be given due consideration as one of the tools to address this area;

(2) Identify high risk minority communities where there are recognized gaps in services for minority populations with HIV/AIDS;

(3) Increase the capacity of existing minority CBOs including small, non-federally funded minority CBOs which are well interfaced with the populations to be served to deliver HIV/AIDS prevention and care by:

(a) Providing administrative technical assistance to improve the fiscal and organizational capacity appropriate to their programmatic responsibilities, which may require a mentoring relationship over time; and

(b) Identifying programmatic technical assistance from the Department of Health and Human Services' Operating Divisions and linking appropriate CBOs with these resources.

(4) Utilizing consultants, as needed, to provide specific technical assistance beyond the expertise of core staff (*e.g.,* peer-peer technical assistance capability); and

(5) Working with newly identified CBOs to develop strong linkages with other providers of services to complete a continuum of prevention and treatment services, including substance abuse treatment and mental health services for minority HIV/AIDS populations.

**Availability of Funds**

Approximately $2.0 million is expected to be available for award in FY 2000. It is projected that awards of up to $1.0 million total costs (direct and indirect) for a 12-month period will be made to two competing applicants.

**Use of Grant Funds**

Budgets of up to $1.0 million total costs (direct and indirect) per year may be requested to cover costs of: Personnel, consultants, supplies, equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed objectives and activities and include a computational explanation of how costs were determined.

**Period of Support**

The start date for the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities, is September 30, 2000. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $1.0 million will be made subject to satisfactory performance and availability of funds.

**Deadline**

To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by June 12, 2000. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

**Addresses/Contacts**

Applications must be prepared using Form PHS 5161–1 (Revised May 1996 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH-RC) at 1–800–444–6472 for health information.

**Criteria for Evaluating Applications**

*Review of Application*

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Each applicant may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health, experience relevant to this technical assistance and capacity development program, and their understanding and knowledge of the health problems confronting racial and ethnic minorities in the United States. Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

*Application Review Criteria*

The technical review of applications will consider the following generic factors.

Factor 1: Background (15%)

Adequacy of demonstrated knowledge of the HIV/AIDS epidemic at the local level. Established level of cultural competence and sensitivity to the issues of minority populations impacted by HIV/AIDS in the service area. Expertise and understanding of HIV/AIDS prevention and treatment service delivery systems especially as related to HIV/AIDS care among minority populations. Demonstrated need for technical assistance and capacity development among the proposed target service organizations. History of long term relationship with the targeted minority community and evidence of support of local agencies and/or organizations.

Extent to which the applicant demonstrates access to targeted

organizations, is well-positioned and accepted within the communities to be served, and able to interface with community leadership and existing provider systems in the area. Demonstration of objective outcomes of past efforts/activities with the target population.

Factor 2: Objectives (15%)

Relative merit of the objectives of the demonstration project, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 3: Methodology (35%)

Appropriateness of proposed approach including any established organizational linkages for providing administrative and programmatic technical assistance related to HIV/AIDS and assisting with the capacity development of identified CBOs. Appropriateness of specific activities for providing administrative and programmatic technical assistance related to HIV/AIDS and capacity development. Logic and sequencing of the planned approaches in relation to the provision of HIV/AIDS technical assistance and capacity development. Appropriateness of defined roles and resources.

Factor 4: Evaluation (20%)

Thoroughness, feasibility, and appropriateness of the evaluation design, data collection, and analysis procedures. For example, number of new CBOs identified, number of new CBOs submitting applications for grants and number of grants awarded, number of CBOs requesting technical assistance and the percentage receiving it, and identification of outcome variables for quality of service. Clarity of the intent and plans to document the activities and their outcomes to establish a model. The potential for replication of the project for similar target populations and communities including the assessment of the utility of the different tools used to implement the program.

Factor 5: Management Plan (15%)

Applicant demonstrates an ability to mobilize a strong administrative technical assistance capacity with onsite knowledge of organizational management skills, diversification of fiscal base, and organizational development. Applicant organization's capability to manage and evaluate the project as determined by: The qualifications of proposed staff or requirements for ''to be hired'' staff; proposed staff level of effort; and management experience of the applicant.

**Award Criteria**

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health of the Office of Minority Health and the Director of the Office of HIV/AIDS Policy and will take under consideration: Recommendations/ratings of the review panel and geographic and racial/ethnic distribution. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities in the 11 eligible metropolitan statistical areas.

**Definitions**

For purposes of this grant announcement, the following definitions are provided:

*Community-Based Organization*—Public and private, nonprofit organizations which are representative of communities or significant segments of communities, and which address health and human services.

*Community Coalition*—At least three (3) discrete organizations and institutions in a community which collaborate on specific community concerns, and seeks resolution of those concerns through a formalized relationship documented by written memoranda of understanding/ agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

*Minority Community-Based Organization*—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities employed in key program positions, and an established record of service to a racial/ethnic minority community.

*Minority Populations*—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

**Reporting and Other Requirements**

*General Reporting Requirements*

A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under CFR 74.50—74.52.

*Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants*

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

*Public Health System Reporting Requirements*

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

*State Reviews*

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up

a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer.

The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs'' Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

**OMB Catalog of Federal Domestic Assistance**

The OMB Catalog of Federal Domestic Assistance number for this program is 93.006.

Dated: March 31, 2000.

**Nathan Stinson, Jr.,**

*Deputy Assistant Secretary for Minority Health.*

[FR Doc. 00–9149 Filed 3–12–00; 8:45 am]

**BILLING CODE 4160–17–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

### Community/Tribal Subcommittee and the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

*Name:* Community/Tribal Subcommittee(CTS).

*Times and Dates:* 8:30 a.m.–4 p.m., May 2, 2000; 8:30 a.m.–3 p.m., May 3, 2000.

*Place:* Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia 30030.

*Status:* Open to the public, limited by the available space.

The meeting room accommodates approximately 60 people.

*Purpose:* This subcommittee will bring to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

*Matters To Be Discussed:* Agenda items include an update on Action Items from previous meetings; discussion of criteria for CTS and Special Consultants' participation in non-ATSDR activities; CTS Special Consultant will update on attendance to Environmental Protection Agency's National Environmental Justice Advisory Committee Meeting; discussion on Federal Facilities activities with DOD and DOE Liaisons; update on ATSDR Five-Year Research Agenda; CTS update on cultural sensitivity training; and, an update on the Office of Tribal Affairs activities.

*Name:* Board of Scientific Counselors, ATSDR.

*Times and Dates:* 8:30 a.m.–5 p.m., May 4, 2000. 8:30 a.m.–1 p.m., May 5, 2000.

*Place:* Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia 30030.

*Status:* Open to the public, limited by the available space.

The meeting room accommodates approximately 60 people.

*Purpose:* The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of science in ATSDR-supported research, emerging problems that require scientific investigations, accuracy and currency of the science in ATSDR reports, and program areas to emphasize or de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency awards grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

*Matters To Be Discussed:* Agenda items will include an update on the development of the ATSDR Research Agenda; discussion on issues of implementation, integration of programs, and funding mechanisms for research agendas by CDC, EPA, and NIOSH; discussion of collection and storage of biological materials; discussion of voluntary research, the Great Lakes research program, and the AMPHS program; an overview of cultural sensitivity training on American Indian issues; an update by the Community and Tribal Subcommittee; and discussion of activities related to Libby, Montana.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Robert Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–9188 Filed 4–12–00; 8:45 am]

**BILLING CODE 4163–70–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACF/ACYF/CB FY 2000–01]**

### Announcement of the Availability of Financial Assistance and Request for Applications To Support Adoption Opportunities Demonstration Projects, Child Abuse and Neglect Discretionary Activities, Child Welfare Training Projects, and Abandoned Infants Assistance Awards

**AGENCY:** Children's Bureau, Administration on Children, Youth and Families, ACF, DHHS.

**ACTION:** Notice.

**Statutory Authority Covering Programs in This Announcement With Catalog of Federal Domestic Assistance (CFDA) Numbers**

Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, (42 U.S.C. 5111) CFDA: 93.652.

Child Welfare Training: Section 426 of title IV–B, Subpart 1, of the Social Security Act, as amended, (42 U.S.C. 626) CFDA: 93.648.

Promoting Safe and Stable Families: Section 430 of title IV–B, Subpart 2, of the Social Security Act, as amended, (42 U.S.C. 629) CFDA: 93.556.

Child Abuse and Neglect: Section 104 of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 *et seq.*) CFDA: 93.670.

Abandoned Infants: Section 101 of the Abandoned Infants Assistance Act, as amended (42 U.S.C. 670 note) CFDA: 93.551.

**SUMMARY:** The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 2000 funds for competing new Aodption Opportunities Program, Child Abuse and Neglect Discretionary Activities, Child Welfare Training Projects, and Abandoned Infants Assistance projects. Funds from the Adoption Opportunities

Program are designed to provide support for demonstration projects that facilitate the elimination of barriers to adoption and provide permanent loving homes for children who would benefit from adoption, particularly children with special needs. Discretionary funds from the Promoting Safe and Stable Families Program support research, training and technical assistance and evaluation efforts to preserve families. Funds from the Child Abuse Prevention and Treatment Act support knowledge-building research and service demonstration projects designed to assist and enhance national, State and community efforts to prevent, assess, identify and treat child abuse and neglect. Funds from section 101 of the Abandoned Infants Assistance Act, as amended, (42 U.S.C. 670 note) are to establish a program of comprehensive service demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those exposed to a dangerous drug and those with the human immunodeficiency virus or who have been perinatally exposed to the virus. The Child Welfare Training Program funds support discretionary awards to public or other non-profit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Department of health and Human Services (DHHS).

**DATES:** The closing date for receipt of applications is 4:30 P.M. EDT June 12, 2000.

**Note:** Applications should be submitted to the ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

**ADDRESSES:** Applications, including all necessary forms can be downloaded from the Children's Bureau web site at *www.acf.dhhs.gov/programs/cb.* Hard copies of the application may be obtained by writing or calling the Operations Center (see phone number and address below) or sending an email to *cb@lcgnet.com.*

**FOR FURTHER INFORMATION CONTACT:** ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or 1–800–351–2293.

**SUPPLEMENTARY INFORMATION:**

**Priority Areas**

*2000A. Adoption Opportunities*

2000A.1 Implementation of Collaborative Planning To Increase Inter-Jurisdictional Adoptions

Eligible Applicants: Eligibility is limited to the five grantees currently funded under Fiscal Year (FY) 1999 priority 99A.4 (Program Announcement No. ACF/ACYF/CB–99–05): the Central Council of Tlingit and Haida Tribes of Alaska, Juneau, AK; the Colorado Department of Human Services, Denver, CO; the Independent Adoption Center, Pleasant Hill, CA; the South Carolina Department of Social Services, Columbia, SC and the Texas Department of Protective and Regulatory Services, Austin, TX.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $250,000 per budget year.

Matching Requirements: The applicant must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the ACF share and non-Federal share. Therefore, a project requesting $250,000 of Federal funds must include a match of at least $27,778 (10 percent of the total project cost of $277,778). Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

2000A.2 Operation of a National Adoption Information Exchange System

Eligible Applicants: Any national, State, or local government entity, public or private non-profit agency, organization or university with demonstrated expertise in adoption and the ability to maintain a National Adoption Information Exchange System.

Project Duration: The operation of a National Adoption Information Exchange system will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability to funds, satisfactory progress on the part to the grantee, the status of the Internet-based photo listing system, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $500,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $500,000 per budget period must include a match of at least $55,556 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that 1 project will be funded.

2000A.3 Innovations Increasing Adoptive Placements of Hispanic/Latino Children

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies and adoption exchanges.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $250,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $250,000 in Federal funds (based on an award of $250,000 per budget period) must include a match of at least $27,778 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are

encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that up to ten projects will be funded.

2000A.4 Leadership Development: Parent Support Groups

Eligible Applicants: Private non-profit organizations or universities (including university affiliated programs) with expertise in child welfare and the ability to create and establish a network of parent support groups for (1) foster parents (2) adoptive parents of children with developmental disabilities and/or special needs, and/or (3) relatives caring for kin in foster care. The Children's Bureau anticipates making three awards, one to focus on each target group. That is, one to develop a network for foster parents; one to develop a network for adoptive parents of children with developmental disabilities and/or special needs; and one to develop a network for relatives caring for kin in foster care, pending successful review. Eligible applicants must have the ability to (1) provide (or broker the provision of) training and technical assistance for parent groups and (2) to solicit, review, and fund a limited number of mini-grants directly to parent groups.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.]

Federal Share of Project Costs: The maximum Federal share of the project is $300,000 per budget year per grantee.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. A project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. The non-Federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirement through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded—one for each target population ((1) foster parents, or (2) adoptive parents of children with developmental disabilities and/or special needs, or (3) relatives caring for kin in foster care).

2000A.5 Innovations To Increase Permanency Options for Children Using Kinship Care

Eligible Applicants: Eligibility is limited to States, local social services agencies and federally recognized Indian Tribes and Indian Tribal Organizations. The Children's Bureau encourages partnerships with private non-profit agencies, universities, and foundations.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $300,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the Federal share and the non-budget period must include a match of at least $33,000 per budget period. The non-Federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Project to be Funded: It is anticipated that 5 projects will be funded.

2000A.6 Knowledge Development for Concurrent Planning

Eligible Applicants: State or local governments alone or in collaboration with Federally recognized tribes and tribal organizations or with private non-profit licensed child placement or adoption agencies with expertise in permanency planning.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Cost: The maximum Federal share of the project is $300,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the ACYF share and non-Federal share. A project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. The non-Federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that five projects will be funded.

2000A.7 Collaborations Between Child Welfare Agencies and Court Systems to Facilitate Timely Adoptions

Eligible Applicants: State and local government or nonprofit organizations engaged in adoption services or child welfare activities, courts, and federally recognized Indian Tribes and Indian Tribal Organizations. Current grantees receiving funds from the Children's Bureau for collaborative efforts for this purpose are not eligible.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $22,222 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that up to 10 projects will be funded.

2000A.8 Innovative Approaches To Expediting Permanence and Implementing ASFA

Eligible Applicants: States and local government entities, public or private non-profit licensed child welfare or adoption agencies, local social services agencies and Federally recognized Indian Tribes and Indian Tribal Organizations. The Children's Bureau encourages partnerships with private

non-profit agencies, universities, and foundations, if appropriate.

Project Duration: The projects will be awarded for a period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $300,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the ACYF share and non-Federal share. A project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that up to ten projects will be funded.

*2000B: Child Abuse and Neglect Discretionary Activities*

2000B.1 Consortium for Longitudinal Studies of Child Maltreatment Projects (LONGSCAN)

Eligible Applicants: Eligibility is limited to current grantee and subgrantee members of the Consortium for Longitudinal Studies: The University of North Carolina, Chapel Hill; San Diego State University Foundation, San Diego; the Juvenile Protective Association, Chicago; the Department of Social and Health Services, Olympia, Washington; and the University of Maryland at Baltimore.

Project Duration: The projects will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of each of the five Satellite Sites is not to exceed $250,000 per 12-month budget period. The maximum Federal share of the coordinating center is not to exceed $500,000 per 12-month budget period.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that one Coordinating Center and five Satellite Sites will be funded up to the maximum funding level.

2000B.2 National Data Archive for Child Abuse and Neglect

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher learning.

Project Duration: The projects will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $500,000 per 12-month budget period.

Matching Requirements: There is no matching requirement

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2000B.3 University-Based Doctoral Candidates in Human Services, Medical, or Law Student and Faculty Fellowships for Investigator-Initiated Research in Child Abuse and Neglect

Eligible Applicants: Institutions of higher learning, including law schools and medical schools, teaching hospitals on behalf of qualified doctoral candidates in human service disciplines, law students, medical students, residents (medical, surgical, pediatric, or others), house officers (medical), or fellows (medical) enrolled in the institution and faculty employed by the institution. To be eligible to administer such a grant, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Post-Secretary Accreditation, or, as appropriate, the Association for American Law Schools or the American Bar Association; the Accreditation Council for Graduate Medical Education, American Association of Medical Colleges, or the Liaison Committee for Medical Education, as applicable. While an individual is considered to be the beneficiary of the grant support, awards will be made only to eligible institutions on behalf of their qualified candidates.

Project Duration: The length of the projects may not exceed 17 months.

Federal Share of the Project costs: The maximum Federal share of the project is not to exceed $100,000 per university or institution, at $18,750 per student with a maximum of four student-candidates and $25,000 for the faculty candidate.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to five sites will be funded.

2000B.4 Pilot Test Sites for a Child Abuse and Neglect Research Data Collection Instrument

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher learning, alone or in partnerships. If partnerships are created, one agency must be identified as the applicant organization and will have legal responsibility for the grant.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share of each site is $50,000.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to five sites will be funded.

2000B.5 National Network of Mutual Support/Self-Help Programs in Partnership With Communities

Eligible Applicants: Public or private nonprofit agencies or organizations who have the capacity to operate a national organization as well as assist in the creation of local support groups.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $500,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10% of the total cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. A project requesting $500,000 per budget period must include a match of at least $55,555 per budget period. The non-federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirement through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

*2000C: Child Welfare Training Discretionary Grants*

2000C.1 Training of Child Welfare Practitioners To Work Effectively With Youth Transitioning Out of Foster Care Through the Federal Independent Living Program

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs, or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds.

Anticipated Number of Projects to be Funded: It is anticipated that approximately ten projects will be funded.

2000C.2 Training for Managers and Supervisors To Enhance Their Capability To Understand and To Implement the Adoption and Safe Families Act of 1997

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs, or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: The length of the project may not exceed 36 months. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match the title IV–E training funds. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to ten projects will be funded.

2000C.3 Training of Child Welfare Agency Supervisors

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs, or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 per 12-month budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be case or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Because this is a training grant, indirect costs for their projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowable of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that a total of approximately five projects will be funded.

2000C.4 Professional Education for Current and Prospective Public Child Welfare

*Practitioners Leading to Bachelor of Social Work (BSW) Degrees*

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 for the 12-month budget period. A traineeship must not exceed $7,500 per student per budget year. A minimum of three-fourths of the total project funds must be used for traineeships. The subsequent year funding of the project will depend on the availability of funds.

Matching or Cost Sharing Requirement: No matching funds are required for the portion of the budget which pays for traineeships. However, grantees must provide at least 25 percent of the total cost of grant activities other than traineeships. The total approved cost of these activities is the sum of the ACYF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through a cash contribution. Therefore, a project requesting $18,750 in Federal funds for non-traineeship activities over the 12 month time span of the budget (based on $56,250 traineeship activities per budget period) must include a match of

at least $6,250 (25 percent of the total cost for their activities). Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds.

Anticipated Number of Projects to be Funded: It is anticipated that approximately ten projects will be funded.

*2000D: Abandoned Infants Program Service Demonstration Projects*

2000D.1 Previous Service Demonstration Projects

Eligible Applicants: Comprehensive service demonstration projects initially funded in FY 1996. Current grantees applying under this priority area should be advised that this is a competitive funding process and that applications approved for funding will be given a new grant number. Existing award activities cannot overlap with the new grant's project period and funds from the currently existing grants cannot be expended for new grant activities.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share Of Project Costs: Grant amounts will vary and range up to $450,000 per budget year for each of the four years.

Matching Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per budget year), must include a match of at least $200,000 (10 percent of total approved project costs, *i.e.,* $50,000 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that three to six projects will be funded under this priority area.

2000D.2 New Start Comprehensive Service Demonstration Projects

Eligible Applicants: Any State, local public or nonprofit agency or organization including accredited colleges and universities. Applicants who can apply under this priority area include: (1) Applicants in jurisdictions in which there currently does not exist a program funded under the Abandonment Infants Assistance Program (call the National Abandoned Infants Assistance Resource Center at 510–643–8390 for a list of current programs); (2) applicants who have previously received funding under the Abandoned Infants Assistance Program but are not currently grantees; and (3) applicants that are currently funded by the Abandoned Infants Assistance Program but are establishing a program in a separate locality serving a different target population, e.g., an agency establishing a program in a different city or establishing a second program in a city with a population over 1,000,000.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amounts will vary and range up to $450,000 per budget year for each of the four years.

Matching Requirement: The grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per budget year), must include a match of at least $200,000 (10 percent of total approved project costs, *i.e.,* $50,000 per budget period).

Anticipated Number Of Projects to be Funded: It is anticipated that three to six projects will be funded.

2000D.3 Family Support Services for Grandparents and Other Relatives Providing Care for Children and Substance Abusing and HIV-Positive Women

Eligible Applicants: Public agencies and private, non-profit organizations and institutions of higher education are eligible to apply.

Project Duration: The projects will be awarded for a period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grants amounts will not exceed $100,000 per budget year for each of the four years. The dollar amount requested must be fully justified and documented.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $400,000 in Federal funds for all four project years (based on an award of $100,000 per budget year), must include a match of at least $44,444 (10 percent of total approved project costs, *i.e.,* $11,111 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

2000D.4 Recreational Services for Children Affected by HIV/AIDS

Eligible Applicants: Public agencies and private, non-profit organizations and institutions of higher education are eligible to apply.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amounts will vary from $50,000 to $100,000 per budget year for each of the four years. The dollar amount requested must be fully justified and documented.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their matching requirements through cash contributions. Therefore, a project requesting a total of $400,000 in

Federal funds for all four project years (based on an award of $100,000 per budget year), must include a match of at least $44,444 (10 percent of total approved project costs, *i.e.,* $11,111 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that two to three projects will be funded.

**Evaluation Criteria**

Reviewers will consider the following factors when scoring applications. However, in order to adequately prepare their applications, applicants must refer to the full program announcement for the specific evaluation criteria for each priority area. The points awarded for each criterion vary, depending on the specific priority area.

*Criterion 1: Objectives and Need for Assistance*

Applications will be judged on the extent to which they clearly specify the purposes and/or strategies of the proposed project and their relationship to legislative authority and child welfare outcomes, as appropriate; the quality of their statement regarding the need for the project; and evidence that the applicant understands current issues and recent developments in the field that may have relevance to the implementation of the project. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

*Criterion 2: Results or Benefits Expected*

Applications will be judged on the extent to which they define both interim and final results and benefits that they will seek to achieve through implementation of their proposed projects, how these results/benefits will contribute to the overall improvement of the field, and, where appropriate, the innovative aspects of the proposed project. Applicants are encouraged to define clear, objective measures by which their results/benefits will be determined. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

*Criterion 3: Approach*

Applicants will be judged on the clarity, feasibility, and thoroughness of their description of the approach that they intend to use in implementing proposed projects. The approach sections will be expected to include, as appropriate, information on barriers to implementation and proposed solutions to those barriers; necessary collaborations with other organizations and agencies and their respective roles; evaluation plans; reporting requirements; and staffing plans. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

*Criterion 4: Organization Profile*

Applicants will be judged on the experience and demonstrated competence of staff who are proposed to implement the project and, as appropriate, the experience of the organization in implementing related projects. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

*Criterion 5: Budget and Budget Justification*

Applicants will be judged on the adequacy, reasonableness, and completeness of their budget requests to support their proposed projects, including their management plans to control and account for expenditure of project funds. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

**Required Notification of the Single Point of Contact**

Most portions of this program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own process for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants to the Adoption Opportunities program are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule. A list of the Single Points of Contact for each State and Territory can be found on the web site *http://www.dhhs.gov/progorg/grantsnet/laws-reg/spoq0695.htm.*

Dated: April 7, 2000.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 00–9150 Filed 4–12–00; 8:45 am]

**BILLING CODE 4184–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1224]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in a guidance for industry entitled ''Submitting and Reviewing Complete Responses to Clinical Holds.'' The guidance describes how to submit a complete response if an investigational new drug (IND) application is placed on clinical hold by FDA.

**DATES:** Submit written comments on the collection of information by June 12, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Guidance for Industry: ''Submitting and Reviewing Complete Responses to Clinical Holds''**

On November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act (the Modernization Act) (Public Law 105–115). Section 117 of the Modernization Act provides that a written request to FDA from the applicant of an investigation that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. A clinical hold is an order issued by FDA to the applicant to delay a proposed clinical investigation or to suspend an ongoing investigation for a drug or biologic. An applicant may respond to a clinical hold.

Under section 505(i)(3)(C) of the Federal Food, Drug, and Cosmetic Act, any written request to FDA from the sponsor of an investigation that a clinical hold be removed must receive a decision, in writing and specifying the reasons, within 30 days after receipt of the request. The request must include sufficient information to support the removal of the clinical hold.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA published a notice of availability of a guidance that described how applicants should submit responses to clinical holds so that they may be identified as complete responses and the agency can track the time to respond. FDA is now issuing a revised guidance.

The revised guidance states that FDA will respond in writing within 30-calendar days of receipt of a sponsor's request to release a clinical hold and a complete response to the issue(s) that led to the clinical hold. An applicant's complete response to an IND clinical hold is a response in which all clinical hold issues identified in the clinical hold letter have been addressed.

The guidance requests that applicants type in large, bold letters at the top of the cover letter of the complete response ''Clinical Hold Complete Response'' to expedite review of the response. The guidance also requests that applicants submit the complete response letter in triplicate to the IND, and that they fax a copy of the cover letter to FDA's contact listed in the clinical hold letter who is responsible for the IND. The guidance requests more than an original and two copies of the cover letter in order to ensure that the submission is received and handled in a timely manner.

Based on data concerning the number of complete responses to clinical holds received by the Center for Drug Evaluation and Research (CDER) from July 1, 1998, to June 30, 1999, CDER estimates that approximately 48 responses are submitted annually from approximately 43 applicants, and that it takes approximately 284 hours to prepare and submit to CDER each response.

Based on data concerning the number of complete responses to clinical holds received by the Center for Biologics Evaluation and Research (CBER) in fiscal year 1999, CBER estimates that approximately 134 responses are submitted annually from approximately 110 applicants, and that it takes approximately 284 hours to prepare and submit to CBER each response.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Complete Responses to Clinical Holds | No. of Respondents | No. of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| CDER | 43 | 1 | 48 | 284 | 13,632 |
| CBER | 110 | 1 | 134 | 284 | 38,056 |
| Total | | | | | 51,688 |

[1] There are no capital cost or operating and maintenance costs associated with this collection of information.

Dated: April 7, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9128 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1226]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational Device Exemptions, Reports, and Records

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for investigational device exemptions (IDE's).

**DATES:** Submit written comments on the collection of information by June 12, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Investigational Device Exemptions, Reports, and Records—21 CFR Part 812 (OMB Control No. 0910–0078)—Extension**

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices, and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The FDA Modernization Act of 1997 added section 520(g)(6) to the act and permitted changes to be made to either the investigational device or to the clinical protocol without FDA approval of an IDE supplement.

An IDE allows a device, which would otherwise be subject to provisions of the act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices, and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards.

To do this, the regulation provides for different levels of regulatory control depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, ones that do not present a potential for serious harm, are subject to the reduced burden of the abbreviated requirements.

The regulation also includes provisions for treatment IDE's. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available.

Section 812.10 allows the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety.

Sections 812.20, 812.25, and 812.27, consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant risk device investigations. Section 812.20 lists the data requirements for the original IDE application; § 812.25 lists the contents of the investigational plan; and § 812.27 lists the data relating to previous investigations or testing. The information in this original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and for FDA to make a determination to approve the IDE.

Once FDA approves an IDE application, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation which affects the scientific soundness of the study or the rights, safety, or welfare of the subjects is required to submit a request for the change to FDA. Under § 812.150, a sponsor is required to submit reports to FDA. These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to ensure

protection of human subjects and to allow review of the study's progress.

Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interests of the public health. Section 812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device and to ensure the integrity of the controlled clinical trials.

Section 812.140 lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study; records of receipt, use, or disposition of devices; records of each subject's case history and exposure to the device; informed consent documentation; study protocol and documentation of any deviation from the protocol. Sponsors are required to maintain records, including correspondence and reports concerning the study; records of shipment and disposition; signed investigator agreements; adverse device effects information; and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records on device name and intended use, study objectives, investigator information, institutional review board (IRB) information, and a statement on the extent that good manufacturing practices will be followed.

The most likely respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 812.10 | 1 | 1 | 1 | 1 | 1 |
| 812.20, 812.25, and 812.27 | 600 | 0.5 | 300 | 80 | 24,000 |
| 812.35 and 812.150 (Significant) | 600 | 7 | 4,200 | 6 | 25,200 |
| 812.150 (Nonsignificant) | 600 | 0.017 | 10 | 6 | 60 |
| 812.36(c) | 6 | 1 | 6 | 120 | 720 |
| 812.36(f) | 6 | 2 | 12 | 20 | 240 |
| Total | | | | | 50,221 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 812.140 | 600 | 0.5 | 300 | 10 | 3,000 |
| Original Supplemental | 600 | 7 | 4,200 | 1 | 4,200 |
| Nonsignificant | 600 | 1 | 600 | 6 | 3,600 |
| Total | | | | | 10,800 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

**I. Reporting**

Section 812.10 estimates are based on the fact that FDA has received very few, if any, waiver requests in the past, and estimates that very few will be submitted in the future. Therefore, FDA estimates a minimal burden to account for waiver requests.

Sections 812.20, 812.25, and 812.27 estimates are based on the average of IDE's submitted from fiscal years 1995 through 1999. FDA estimates the annual reporting burden for one IDE original application to be approximately 80 hours, and the annual reporting burden for one IDE supplement to be approximately 6 hours.

Sections 812.35 and 812.150 estimates are based on the average of IDE supplements submitted from fiscal years 1995 through 1999 for significant risk device studies. FDA estimates the annual reporting burden for one IDE supplement to be approximately 6 hours.

The reporting burden for nonsignificant risk device studies (§ 812.150) is negligible. Nonsignificant risk device studies are not reported to FDA unless a problem is reported such as an unanticipated adverse device reaction, failure to obtain informed consent, withdrawal of IRB approval, or a recall of a device. In the past, an average of 10 incidences or less annually have been reported to FDA.

Section 812.36(c) and (f) estimates are based on FDA's experience with the treatment use of drugs and knowledge of the types of devices that may meet the treatment use criteria. FDA estimates that an average of six treatment use applications will be submitted each year. FDA estimates that it will take approximately 120 hours to prepare a treatment IDE and the total annual burden for preparing applications will be 720 hours. FDA also estimates that it will take approximately 20 hours to prepare a semiannual report, resulting in a total annual burden of 240 hours for annual reports.

**II. Recordkeeping**

Section 812.40 estimates are based on conversations with manufacturers, industry trade association groups, and businesses over the last 3 years. For significant risk device investigations, FDA has estimated that the recordkeeping burden for preparing an original IDE submission averages 10 hours for each original IDE submission. Similarly, through the same conversations mentioned above, FDA has estimated recordkeeping for each supplement requires 1 hour. The recordkeeping burden for nonsignificant risk device investigations is difficult to estimate because nonsignificant risk device investigations are not required to

be submitted to FDA. The IDE staff estimates that the number of recordkeepers for nonsignificant risk device investigations is equal to the number for active significant risk device investigations. The recordkeeping burden, however, is reduced for nonsignificant risk device studies. It is estimated that 600 recordkeepers will spend 6 hours each in maintaining these records.

Dated: April 7, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9131 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–4329]**

### Agency Information Collection Activities; Announcement of OMB Approval; Filing Objections and Requests for a Hearing on a Regulation or Order

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Filing Objections and Requests for a Hearing on a Regulation or Order'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 29, 2000 (65 FR 10811), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0184. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9127 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–0595]**

### Agency Information Collection Activities; Announcement of OMB Approval; Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the**Federal Register** of January 26, 2000 (65 FR 4249), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0437. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9130 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–4069]**

### Agency Information Collection Activities; Announcement of OMB Approval; Notice of Participation

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Notice of Participation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 29, 1999 (64 FR 73056), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0191. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9133 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–4068]**

### Agency Information Collection Activities; Announcement of OMB Approval; Advisory Opinions

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

**ACTION:** Notice.

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

that a collection of information entitled ''Advisory Opinions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 29, 1999 (64 FR 73056), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0193. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9134 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–0002]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Exemption From Federal Preemption of State and Local Medical Device Requirements

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by May 15, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Application for Exemption From Federal Preemption of State and Local Medical Device Requirements—21 CFR Part 808 (OMB Control No. 0910–0129)—Extension

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) provides that no State or local government may establish, or continue in effect, any requirement with respect to a medical device that is different from, or in addition to, any Federal requirement applicable to the device under the act. Under section 521(b) of the act, following receipt of a written application from the State or local government involved, FDA may exempt from preemption a requirement that is more stringent than the Federal requirement, or that is necessitated by compelling local conditions and compliance with the requirement that would not cause the device to be in violation of any portion of any requirement under the act. Exemptions are granted by regulation issued after notice and opportunity for an oral hearing.

The regulations in 21 CFR 808.20 require a State or local government that is seeking an exemption from preemption to submit an application to FDA. The application must include a copy of the State or local requirement, as well as information about its interpretation and application, and a statement as to why the applicant believes that the requirement qualifies for exemption from preemption under the act. FDA will use the information in the application to determine whether the requirement meets the criteria for exemption in the act and whether granting an exemption would be in the interest of the public health.

In addition, 21 CFR 808.25 provides that an interested person may request a hearing on an application by submitting a letter to FDA following the publication by FDA of a proposed response to the application.

In the **Federal Register** of January 18, 2000 (65 FR 2631), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | No. of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 808.20 | 3 | 1 | 3 | 100 | 300 |
| 808.25 | 3 | 1 | 3 | 10 | 30 |
| Total | | | | | 330 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates of the number of submissions expected in the future contained in table 1 of this document on the number of submissions submitted in the last 3 years and on the number of inquiries received indicating that applications would be submitted in the next year. FDA based its estimates of the time required to prepare submissions on discussions with those who have prepared submissions in the last 3 years.

Dated: April 7, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–9132 Filed 4–12–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Transition Career Development Award (K22).

*Date:* April 26, 2000.

*Time:* 2 pm to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

*Contact Person:* Mary Bell, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.396, Cancer Research Manpower; 93.399, Cancer Control, National institutes of Health, HHS)

Dated: April 5, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–9185 Filed 4–12–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Environmental Health Sciences: Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Environmental Health Sciences Council, Agenda Available: http://www.niehs.nih.gov/dert/c-agenda.htm.

*Date:* May 15–16, 2000.

*Open:* May 15, 2000, 8:30 am to 5 pm.

*Agenda:* Director's Report and discussion of program policies and issues.

*Place:* Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

*Closed:* May 16, 2000, 8:30 am to 2 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

*Contact Person:* Anne P. Sassaman, Director, Division of Extramual Research and Training, Executive Secretary, National Institutes of Environmental, Health Sciences, NIH/PHS, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response of Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93–142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, HIEHS Superfund Hazardous Substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 5, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–9184 Filed 4–12–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in May 2000.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (6) and 5 U.S.C. App. 2, sec. 10(d).

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* May 1–4, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* May 1–4, 2000, 8:30 a.m.–5 p.m./adjournment.

*Panel:* Community Action Grants, PA 000–003.

*Contact:* Michael Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: April 3, 2000.

**Coral Sweeney,**

*Review Specialist, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 00–9208 Filed 4–12–00; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4590–N–01]**

## Notice of Public Forums and Establishment of HUD Task Force on Predatory Lending Practices

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD announces that its Assistant Secretary for Housing-FHA Commissioner and its General Counsel will co-chair public fact-finding forums on the subject of predatory lending practices during the months of April and May 2000, in the cities of Chicago, Los Angeles, New York and Baltimore. HUD is conducting these forums to gather as much information as possible to propose substantive protections to address abusive lending practices. Toward this objective, HUD also announces the establishment of a Task Force on predatory lending practices. HUD's Task Force includes representatives of consumer, civil rights, community and industry organizations as well as local officials. HUD will solicit the individual views of these members to draw upon their experience, efforts and successes at addressing abusive lending practices at the state and local level throughout the Nation.

**DATES:** The specific dates and times of HUD's forums as well the issues to be addressed will be announced on HUD's web site at http://www.hud.gov and through HUD's Office of Public Affairs.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning this Notice you may contact Allen Fishbein at (202) 708–3600, or via facsimile at (202) 708–2842, or in writing at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410.

For legal questions, you may contact Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Teresa L. Baker, Attorney for RESPA, Room 9262, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–3137 (these are not toll free numbers). Hearing or speech impaired individuals may access these numbers via TTY by calling the toll free General Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. HUD's Views on Predatory Lending Practices

Predatory lending abuses inflate real estate settlement costs, involve high interest rates, result in debts that families cannot afford to repay, strip equity and, in the worst cases, result in default and the loss of homeownership. Evidence from around the country continues to indicate that many of those engaged in predatory lending practices target low income minority communities for their activities, and may be treating minority and elderly borrowers less favorably than others based on their race, age, color or national origin.

Simultaneous with this review, HUD, through its proposed rule on new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government Sponsored Enterprises, or GSEs), issued March 9, 2000 (65 FR 12632), will determine what controls should be established to avoid counting high cost loans with predatory features towards the GSE Housing goals. Additionally, while HUD has addressed related problems in HUD's Federal Housing Administration (FHA) program, including appraisal issues, HUD must make certain that FHA program beneficiaries are protected from predatory abuses.

### II. Background

In July, 1998, HUD and the Board of Governors of the Federal Reserve System (Board) delivered a Joint Report to Congress Recommending Reform of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). HUD and the Board recommended a number of legislative proposals to remedy predatory lending abuses.

HUD has legal authority under several laws that can, at least in part, address a number of these abuses.

RESPA requires that consumers be provided with greater and more timely information on the nature and costs of the settlement process including the costs of obtaining a mortgage loan. RESPA also protects consumers from unnecessarily high settlement charges caused by kickbacks, referral fees and unearned fees involved in real estate settlement services. (12 U.S.C. 2601, *et seq.*)

The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, or handicap in residential real-estate related transactions, which are defined to include the making or purchasing of mortgage loans. (42 U.S.C. 3605.)

The Federal Housing Enterprises Financial Safety and Soundness Act requires the Secretary to establish goals for the GSEs' purchase of mortgages for low- and moderate income families, properties in central cities, rural and other underserved areas and special affordable housing. The Act also requires the Secretary to prohibit discrimination in the GSEs' mortgage purchases. (12 U.S.C. 4501 *et seq.*)

The National Housing Act established the Federal Housing Administration program, a key component of the Department, to provide mortgage insurance to facilitate homeownership. (12 U.S.C. 1701 *et seq.*)

### III. HUD's Actions To Address Predatory Lending Practices

*The Task Force*

The Secretary of HUD has appointed a Task Force on Predatory Lending, which will be chaired by the Assistant Secretary for Housing, who is also the FHA Commissioner, and HUD's General Counsel. HUD's Task Force includes representatives of consumer, civil rights, community and industry organizations as well as local officials. The members of the Task Force will:

(1) Provide individual views on predatory lending practices and help develop a list of experts and other knowledgeable persons who may participate and share their knowledge of, and experience in, the subject of predatory lending practices at the planned public forums;

(2) Help HUD consider and understand the views presented at the forums by giving individual members' reactions to the testimony presented; and

(3) Provide individual perspectives on proposals that might be made as a result of the forums.

By including a wide-range of experts and advocates on the Task Force, HUD will draw upon the good work that has already been done on this problem at the state and local level in various parts of the Nation.

*The Public Forums*

HUD's Assistant Secretary for Housing/FHA Commissioner and the General Counsel will also co-chair at least four public forums during April and May, 2000, to gather information and views on this problem. HUD has planned public forums for the cities of Chicago, Los Angeles, New York and Baltimore. At one or more of these forums, HUD will address a range of issues including:

- The dimensions of the problem;
- Distinguishing predatory lending practices from beneficial subprime lending;

• The adverse effects of predatory lending practices on minority and elderly borrowers;

• Possible improvements under existing federal laws and proposals for new protections;

• The role of state laws in stemming abusive lending;

• Predatory lending, the secondary market and the securities industry—from Main Street to Wall Street;

• The role of enforcement in stemming predatory lending practices under federal laws, such as the Fair Housing Act and RESPA;

• Counseling and consumer education; and

• Positive and negative effects of technology on predatory abuses.

The agendas for each forum will be established in advance and made available by HUD through its web site (http://www.hud.gov) and through HUD's Office of Public Affairs. Following these forums, HUD will propose protections to address abusive lending practices.

Dated: April 10, 2000.

**Gail W. Laster,**

*General Counsel.*

[FR Doc. 00–9284 Filed 4–11–00; 8:46 am]

**BILLING CODE 4210–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

**Endangered Species**

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–025112

*Applicant:* Dana M. Biasatti, Dallas, TX

The applicant requests a permit to import samples obtained from salvaged Leatherback (*Dermochelys coriacea*), Green (*Chelonia mydas*) and Olive Ridley (*Lepidochelys olivacea*) marine turtles for the purpose of in enhancement of the species through scientific research.

PRT–024610

*Applicant:* Michael J. Flannery, Soldotna, AK

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–024500

*Applicant:* James D. McChesney, Cooperstown, NY

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–024498

*Applicant:* Roland Garrett, Yorktown, VA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species

PRT–024740

*Applicant:* Robert D. Adams, Hazel, SD

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–649126

*Applicant:* National Institutes of Health, Frederick, MD,

The applicant requests a permit to renew their current permit which authorizes import and/or interstate commerce to obtain biological samples taken from endangered and threatened mammals. They request the re-authorization specifically include the import and/or interstate commerce of DNA samples taken from endangered and threatened mammals for the purpose of scientific research.

PRT–024460

*Applicant:* Riverbanks Zoological Park & Botanical Garden, Columbia, SC

The applicant requests a permit to import one captive-born female black-footed cat (Felis nigripes) from the Johannesburg Zoo, Johannesburg, South Africa, for the purpose of enhancing the survival of the species through propagation.

PRT–024461

*Applicant:* Riverbanks Zoological Park & Botanical Garden, Columbia, SC

The applicant requests a permit to import one captive-born male black-footed cat (*Felis nigripes*) from the Pretoria Zoo, Pretoria, South Africa, for the purpose of enhancing the survival of the species through propagation.

PRT–701458

*Applicant:* Carl and Kevin Beck, Pahrump, NV

The applicant requests a permit to re-export and re-import captive-born Bengal tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

PRT–024712

*Applicant:* Wildlife Conservation Society, Bronx, NY

The applicant requests a permit to import up to 100 Kihansi spray toads (*Nectophrynoides asperginis*) from the Kihansi River Gorge area of Tanzania for the purpose of propagation for the enhancement of the survival of the species.

PRT–024861

*Applicant:* Center for Environmental Research and Conservation, Columbia University, New York, NY

The applicant requests a permit to import blood, hair and tissue samples from wild, captive held and/or captive born Asian elephant (Elaphus maximus) for the purpose of enhancement of the species through scientific research.

PRT–023848

*Applicant:* Toledo Zoological Gardens, Toledo, OH

The applicant requests a permit to import two male and one female captive-born Cheetah (*Acinonyx jabatus*) from the Hoedspruit Research and Breeding Centre, Waterjkiif Ridge, South Africa for the purpose of enhancement of the species through captive propagation.

PRT–023849

*Applicant:* Minnesota Zoological Garden, Apple Valley, MN

The applicant requests a permit to import one male captive-born Amur leopard (*Panthera pardus orientalis*) from Jungle Cat World, Ontario, Canada for the purpose of enhancement of the species through captive propagation.

PRT–024092

*Applicant:* Black Pine, Inc. Albion, IN

The applicant requests a permit to export 0.2 captive born tigers (*Panthera tigris*) to Dream World's Tiger Island, Coomera, Queensland, Australia, for the purpose of enhancement of the species through captive propagation.

PRT–799726

*Applicant:* Duke University Primate Center, Durham, NC

The applicant requests a permit to import tissue samples from captive white-fronted lemurs (Lemur fulvus albifrons) at Parc Ivoloina, Madagascar for scientific research.

PRT–025015

*Applicant:* Jack W. Nicklas, North Palm Beach, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

**Marine Mammal**

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–024046

*Applicant:* Craig W. Scott, Corinth, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–024496

*Applicant:* Chris Walgreen, Chicago, IL

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–024621

*Applicant:* Alfred G. Hoover, Bloomfield Hills, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–024741

*Applicant:* Michael T. Warn, Aurora, OR

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–024962

*Applicant:* Richard A. Belotti, Monroe Township, NJ

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data, comments or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 7, 2000.

**Kristen Nelson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–9138 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–55–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under Section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and Title 50, of the Code of Federal Regulations, Section 15.26(c).

Applicant: Jeanette Rilling, Kintnersville, PA. The applicant wishes to establish a cooperative breeding program for the Red-crested cardinal (*Paroaria coronata*) and the Yellow-billed cardinal (*Paroaria capitata*). The applicant wishes to be an active participant in this program with four other private individuals and two zoological organizations. The American Federation of Aviculture Inc. has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: April 10, 2000.

**Mark Phillips,**

*Acting Chief, Branch of Operation, Office of Management Authority.*

[FR Doc. 00–9231 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

On, January 6, 2000 a notice was published in the **Federal Register**, Vol. 65, No.4, Page 787, that an application had been filed with the Fish and

Wildlife Service by Toledo Zoological Gardens, Toledo, OH, for a permit (PRT–014704) to import one captive born polar bear (*Ursus maritimus*) for the purpose of public display.

Notice is hereby given that on March 16, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: April 7, 2000.

**Kristen Nelson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–9139 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–880–9500–PF–24–1A; OMB Approval Number 1004–0109]**

### Extension of Currently Approved Information Collection; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed renewal for information collection OMB approval number 1004–0109 has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On January 24, 2000, BLM published a notice in the **Federal Register** (65 FR 3731) requesting comments on this information collection. The comment period ended on March 24, 2000. BLM received no comments from the public in response to that notice. Copies of the information collection and related forms may be obtained by contacting the BLM information clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, you comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0109), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C Street, NW, Mail Stop 401LS, Washington, DC 20240.

*Nature of Comments:* We specifically request your comments on the following:

1. Whether the collection information is necessary for the proper functioning of BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*Title:* Statement of Federal Land Payments (43 CFR 1881). OMB approval number 1004–0109.

*Abstract:* The BLM is proposing to renew the approval of an information collection for 43 CFR 1881. This allows BLM to collect information that is statutorily required to compute payments due units of general local government under the PILT Act. The Act requires the governor of each State to furnish a statement as to the amounts paid to units of general local government under 11 receipt sharing statutes in the prior fiscal year.

*Bureau Form Number:* None.

*Frequency:* Annually.

*Description of Respondents:* Respondents are State governments.

*Estimated completion time:* 20 hours.

*Annual Responses:* 50.

*Annual Burden Hours:* 1,000.

*Information Clearance Officer:* Carole Smith, (202) 452–0367.

Dated: March 27, 2000.

**Carole Smith,**

*Bureau of Land Management, Information Clearance Officer.*

[FR Doc. 00–9177 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–84–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK990–2000–5101–NH–FL07–262F]**

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted a proposed information collection to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The proposed information collection is the Trans-Alaska Pipeline System Survey of the Employee Concerns Program. On November 17, 1999, BLM published a notice in the **Federal Register** requesting comments on the proposed information collection (64 FR 62684). The comment period closed on January 18, 2000. We received no public comments as a result of that notice.

You can obtain copies of the proposed information collection and explanatory material by contacting BLM's Clearance Officer at the telephone number listed below. OMB must complete its review within 60 days, but may complete it after 30 days. For a maximum consideration, your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, (1004–NEW), 725 17th Street, N.W., Washington, DC 20503.

**Nature of Comments**

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden associated with collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, and other forms of information technology.

*Title:* Trans-Alaska Pipeline System Survey of the Employee Concerns Program.

*OMB Approval Number:* 1004–(NEW).

*Abstract:* Testimony at Congressional hearings in 1992 and 1994 indicted that Alyeska, the contractor what operates the Trans-Alaska Pipeline system (TAPS), maintains a repressive, retaliatory atmosphere to discourage workers from raising concerns about operation of the pipeline. Congress requested that Alyeska take steps to change the culture of the pipeline work environment and asked the Joint Pipeline Office (JPO) to monitor and report on progress. JPO will use this survey to gather opinions form Alyeska and other contractors' employees and supervisors about how well the Employee concerns Program (ECP) is working. JPO will use the results to measure, compare, and report on employee satisfaction with the ECP as a way to assess whether repressive culture is changing.

*Frequency:* Annually.
*Description of respondents:* Employees of Alyeska Pipeline Service Company and contractors.
*Estimated completion time:* 15 minutes for each survey.
*Annual responses:* 1,100.
*Estimated burden hours:* 550 per year.
*Bureau Clearance Officer:* Carole Smith, 202/452–0367.

Dated: April 7, 2000.

**Carole J. Smith,**

*Bureau Information Clearance Officer.*

[FR Doc. 00–9178 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–84–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–046–1610–00]**

### Notice of Availability of Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for a Proposed Plan Amendment to the Vermilion Management Framework Plan (MFP)

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The Bureau of Land Management (BLM), Utah, Kanab Field Office has completed an EA/FONSI for a proposed plan amendment to the Vermilion MFP, updating management of the Coral Pink Sand Dunes, Moquith Mountain, and surrounding area. The proposed plan amendment would: (1) Implement the Conservation Agreement and Strategy for the Coral Pink Sand Dunes Tiger Beetle; (2) implement updated scientific information for management of the threatened Welsh's milkweed; (3) implement off-highway vehicle (OHV) management in the area; (4) implement other recreation activities as directed by the Moquith Mountain WSA Management Guidance and Schedule; (5) provide guidance for development of additional recreation related facilities; (6) improve public safety; and (7) coordinate management of the area with the State of Utah, Coral Pink Sand Dunes State Park. The Coral Pink Sand Dunes and Moquith Mountain area is located in Kane County, Utah and consists of approximately 21,000 acres.

**DATES:** The 30 day protest period for the proposed plan amendment will commence with the publication of this notice. Protests must be received on or before May 15, 2000.

**ADDRESSES:** Protests must be addressed to the Director (W–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, NW, Washington, DC 20240 within 30 days after the date of publication of this Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:** Verlin Smith, Field Manager, Bureau of Land Management, Kanab Field Office, at 318 North, First East, Kanab, Utah 84741 (telephone: 435–644–2672 ext. 2646) or Ronald Bolander, Bureau of Land Management, Utah State Office, 324 South State Street, PO Box 45155, Salt Lake City, Utah 84145–0155 (telephone: 801–539–4065). Copies of the proposed plan amendment/EA/FONSI are available for review at the BLM Kanab Field Office and BLM Utah State Office. In addition, copies are available for review at the State of Utah, Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah, 84114, contact person Jamie Dalton (telephone: 801–538–7311), and at the State of Utah, Department of Natural Resources, Division of Parks and Recreation, Southwest Region Office, 585 North Main, Cedar City, Utah 84721–1079 contact person Gordon W. Topham (telephone: 435–586–4497), or on the Internet at http://www.blm.gov/utah/.

**SUPPLEMENTARY INFORMATION:** This action is announced pursuant to section 202(a) of the Federal Land Policy Management Act (1976) and 43 CFR part 1610. This proposed amendment is subject to protests by any party who has participated in the planning process. Protests must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.

—A statement of the issue(s) being protested.

—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps, etc., of the proposed plan amendment.

—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

—A concise statement as to why the protester believes the proposed decision of the BLM State Director is incorrect.

**Robert Bennett,**

*Acting State Director, Utah.*

[FR Doc. 00–9189 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–030–00–1020–24]**

### Sierra Front/Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting location and time for the Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada).

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada) will be held as indicated below. Topics for discussion will include issues related to the BLM geothermal resource leasing program in Nevada; a review of the BLM Nevada program for emergency fire rehabilitation; the BLM Great Basin Restoration Initiative; BLM management actions in support of recovery efforts for the Sage Grouse; BLM NV wild horse and burro gather strategy for FY2000 and beyond; collaborative BLM/Carson City management plan for the Silver Saddle Ranch; and other topics the council may raise. No field trip is planned as part of this two day meeting.

All meetings are open to the public. The public may present written and/or comments to the council. The public comment period for the council meeting will be at 4 p.m. on Monday, May 1st. The agenda will be available on the internet by April 12, 2000, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, or who desire a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than April 19, 2000.

**DATES & TIMES:** The council will meet on Monday, May 1, 2000, from 10 a.m. to 5 p.m. and Tuesday, May 2, 2000, from 8 a.m. to 3:30 p.m., in the Main Conference Room of the BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Public comment on individual topics will be received at the discretion of the Council Chairperson, as meeting moderator, with a general public comment period on Monday, May 1, 2000, at 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mark Struble, Public Affairs Officer, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6107.

Date: April 3, 2000.

**John O. Singlaub,**

*Manager, Carson City Field Office.*

[FR Doc. 00–9225 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–HC–U**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–952–09–1420–00]**

### Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004, Arizona; Notice of Filing of Plats of Survey

April 4, 2000.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat, in two sheets, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of sections 28 and 29, Township 18 North, Range 9 East, of the Gila and Salt River Meridian, Arizona, accepted February 3, 2000 and officially filed February 16, 2000.

This plat was prepared at the request of the United States Forest Service.

A plat representing the corrective survey of a portion of the Hopi and Navajo Partition line in unsurveyed Township 31 North, Range 12 East, of the Gila and Salt River Meridian, Arizona, accepted March 30, 2000 and officially filed April 7, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat, in ten sheets, representing the survey of the legal descriptive boundary of the Table Top Wilderness Area in Townships 7 and 8 South, Ranges 1, 2, and 3 East, of the Gila and Salt River Meridian, Arizona, accepted March 1, 2000 and officially filed March 16, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, the subdivision of section 19, and a metes-and-bounds survey in section 19, Township 18 South, Range 14 East, of the Gila and Salt River Meridian, Arizona, accepted February 16, 2000 and officially filed February 25, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

2. All inquires relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

**Kenny D. Ravnikar,**

*Chief Cadastral Surveyor of Arizona.*

[FR Doc. 00–9226 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–956–99–1420–00]**

### Colorado: Filing of Plats of Survey

March 30, 2000.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., March 30, 2000. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The supplemental plat creating new lot 12 in the NW¼ section 32, T. 6 S., R. 77 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted January 21, 2000.

The supplemental plat creating new lots 28 thru 34 in T. 1 N., R. 96 W., Sixth Principal Meridian, Colorado, was accepted February 22, 2000.

The plat representing the subdivision of a portion of section 26 and a metes-and-bounds survey of a portion of the west right-of-way of Colorado State Highway No. 9 in section 26, T. 4 S., R. 78 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted March 23, 2000.

The plat representing a metes-and-bounds survey in the southwest quarter of section 36, T. 5 S., R. 78 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted March 23, 2000.

The plat representing a metes-and-bounds survey of a portion of the east right-of-way of Summit County Road No. 5, in the northwest quarter of section 36, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted March 23, 2000.

The plat representing the dependent resurvey of a portion of H.E.S. No. 305, and a metes-and-bounds survey of Tracts 38 and 39, and an informative traverse along the center line of a dirt road in partially surveyed T. 11 S., R. 84 W., Sixth Principal Meridian, Colorado, Group 1262, was accepted February 22, 2000.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional lines and metes-and-bounds surveys in section 9., T. 46 N., R. 10 W., New Mexico Principal Meridian, Colorado, Group 1264, was accepted February 1, 2000.

These surveys were requested by the Forest Service for administrative purposes.

The remonumentation of certain corners in T. 11 S., R. 72 W. and T. 4 S., R. 74 W., Sixth Principal Meridian, Colorado, Group 750, was accepted March 22, 2000.

This remonumentation was requested by the Federal Highway Administration.

The supplemental plat creating new lot 3 from a portion of the canceled claim Last Chance of the Terrible Mine Lode in the NW¼ of section 20, T. 21 S., R. 70 W., Sixth Principal Meridian, Colorado, was accepted January 10, 2000.

The supplemental plat creating new lots 16, 17, 18, and 19 from previous lots 6 and 11 in section 5., T. 13 S., R. 90 W., Sixth Principal Meridian, Colorado, was accepted January 31, 2000.

The supplemental plat correcting the lot numbers in sections 12 and 13, T. 51 N., R. 5 E., and sections 7 and 18, T. 51 N., R. 6 E., New Mexico Principal Meridian, Colorado, Group 1022, was accepted February 22, 2000.

The plat (in three sheets) representing the dependent resurvey of a portion of the east boundary, portions of the subdivisional lines and certain mineral claims, the subdivision of sections 9 and 10, and the metes-and-bounds survey of Tract 37, T. 49 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group 994, was accepted December 22, 1999.

The plat representing the dependent resurvey of certain mineral claims in T. 15 S., R. 70 W., Sixth Principal Meridian, Colorado, Group 1202, was accepted December 14, 1999.

The plat representing the dependent resurvey of a portion of the west boundary and portions of the subdivisional lines and a metes-and-bounds survey in section 7, T. 49 N., R. 8 W., New Mexico Principal Meridian, Colorado, Group 1234, was accepted February 23, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey in section 12, T. 49 N.,

R. 9 W., New Mexico Principal Meridian, Colorado, Group 1234, was accepted February 23, 2000.

These surveys were requested by the Bureau of Land Management for administrative purposes.

**Darryl A. Wilson,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. 00–9224 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–JB–U

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft Supplemental Environmental Impact Statement for Yosemite Valley Plan, Yosemite National Park, Madera, Mono, Tuolumne, and Mariposa Counties, California; Notice of Availability

**SUMMARY:** Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality regulations (40 CFR Part 1500–1508), the National Park Service, Department of the Interior, has prepared a Draft Supplemental Environmental Impact Statement identifying and evaluating five alternatives for a Yosemite Valley Plan within Yosemite National Park, California. Potential impacts, and appropriate mitigations, are assessed for each alternative. When approved, the plan will guide management actions during the next 15–20 years.

**Proposal**

The proposed Yosemite Valley Plan (Alternative 2—Preferred) would restore approximately 180 acres to natural conditions. It would consolidate parking for day visitors at Yosemite Village, where a new Valley Visitor Center would be located, and in parking areas outside Yosemite Valley. There would be fewer campsites and lodging units than there are now. This alternative would result in a major reduction in vehicle travel in the eastern portion of Yosemite Valley during summer months. The area of the former Upper and Lower River Campgrounds would be restored to a mosaic of meadow, riparian, and oak woodland communities, roads would be removed from Ahwahnee and Stoneman Meadows, and parking would be removed from Curry Orchard. Southside Drive would be converted to two-way traffic from El Capitan crossover to Curry Village, and Northside Drive would be converted to a multi-use (bicycle and pedestrian) paved trail from El Capitan crossover to Yosemite Lodge.

**Alternatives**

Alternative 1 maintains the status quo in Yosemite Valley, as described in Chapter 3, Affected Environment. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to measure the environmental effects of those changes. This no-action concept follows the guidance of the Council on Environmental Quality, which describes the no-action alternative as no change from the current management direction or level of management intensity.

Alternative 3 would restore approximately 200 acres to natural conditions. It would consolidate parking for day visitors in the Taft Toe area in mid Yosemite Valley. A new Valley Visitor Center would also be constructed there. There would be fewer campsites and lodging units than there are now. The area of the former Upper and Lower River Campgrounds and the Camp 6 parking area near Yosemite Village would be restored to riparian habitat, roads would be removed from Ahwahnee and Stoneman Meadows, and parking and the historic fruit trees would be removed from Curry Orchard. Northside Drive would be converted to a trail for pedestrians and bicyclists, without the immediate presence of motor vehicles, from Yosemite Lodge to El Capitan Bridge. Southside Drive would be converted to two-way traffic from Taft Toe to Curry Village.

Alternative 4 would restore approximately 190 acres to natural conditions. It would consolidate parking for day visitors in the Taft Toe area in mid Yosemite Valley and in three parking areas outside the Valley. A new Valley Visitor Center would also be constructed at Taft Toe. There would be fewer campsites and lodging units than there are now. The area of former Upper and Lower River Campgrounds and the Camp 6 parking area near Yosemite Village would be restored to riparian communities; roads would be removed from Ahwahnee and Stoneman Meadows; and parking would be removed from Curry Orchard. Northside Drive would be converted to a multi-use paved trail for hikers and bicyclists, without the immediate presence of motor vehicles, from Yosemite Lodge to El Capitan crossover. Southside Drive would be converted to two-way traffic from Taft Toe to Curry Village.

Alternative 5 would restore approximately 120 acres to natural conditions. It would designate parking for day visitors at Yosemite Village and Curry Village, and in parking areas outside of Yosemite Valley. There would be more campsites and fewer lodging units than there are now. Traffic circulation would remain the same as at present; however, one lane of Northside and Southside Drives would be converted to multi-use paved trails. There would be minimal new development in mid and west Yosemite Valley, other than a traffic check station.

**Planning Background**

The draft Yosemite Valley Plan/SEIS was prepared pursuant to the National Environmental Policy Act. A Scoping Notice was published in the **Federal Register** on December 16, 1998. Lists of general issues already raised during the previous planning processes were provided to the public. Scoping comments were to be received by January 15, 1999, however based on requests from the public; the scoping comment period was extended through February 1, 1999.

During this comment period, the NPS facilitated over 100 discussions and briefings to park staff, congressional delegations, elected officials, public service organizations, educational institutions, and other interested members of the public. Nearly 600 letters concerning the Draft YVP SEIS planning process were received. The major issues raised during this period are summarized in Chapter 1, Purpose of and Need for the Action.

**Public Meetings**

In order to facilitate public review and comment on the draft Yosemite Valley Plan/SEIS, the Superintendent has scheduled public meetings in the following California cities: San Francisco—May 22; Sacramento—May 23; Merced—May 24; Oakland—May 25; Yosemite—May 30; Oakhurst—May 31; Mariposa—June 1; Sonora—June 2; Costa Mesa—June 5; Los Angeles—June 6; San Diego—June 7; Mammoth—June 9; Fresno—June 15; San Jose—June 17. The following times are for all venues except San Jose. An open house will be conducted from 4 p.m. to 9:30 p.m and a public hearing will be held simultaneously from 6:30 p.m to 9 p.m. A brief presentation from 6 p.m. to 6:30 p.m. will precede the public hearing. The San Jose open house will be from 11:00 a.m. to 4:30 p.m., the presentation will be from 1:30 p.m. to 2 p.m. and the public hearing will be from 2 p.m. until 4:30 p.m.

Participants are encouraged to review the document prior to attending a meeting. Detailed information on location and times for each of the public meetings will be published in local and regional newspapers several weeks in advance, broadcast via radio and television stations, and listed on the

park's Webpage. Yosemite National Park management and planning officials will attend all sessions to present the draft Yosemite Valley Plan/SEIS, to receive oral and written comments, and to answer questions.

**Comments**

The draft Yosemite Valley Plan/SEIS will be sent directly to the park's general mailing list. Copies will be available at park headquarters in Yosemite Valley, the Warehouse Building in El Portal, and at local and regional libraries (*i.e.,* San Francisco and Los Angeles). Also, the complete document will be posted on the Yosemite National Park Webpage (http://www.nps.gov/yose/planning). Written comments must be received (or transmitted by e-mail) on or before July 7, 2000. All comments should be addressed to the Superintendent, Attn: Yosemite Valley Plan, P.O. Box 577, Yosemite National Park, California 95389 (or e-mailed to: Yose__Planning@nps.gov).

All comments received will be available for public review in the park's research library. If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses, and, anonymous comments may not be considered.

**Decision Process**

Depending upon the degree of public interest and response from other agencies and organizations, at this time it is anticipated that the Final Yosemite Valley Plan/SEIS will be completed during October 2000; availability of the document will be duly noticed in the **Federal Register**. Subsequently, notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the final document is distributed. This is expected to occur by the end of December 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: April 5, 2000.

**John J. Reynolds,**

*Regional Director, Pacific West Region.*

[FR Doc. 00–8998 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Meeting of the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

**AGENCY:** Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** As required by the Federal Advisory Committee Act, notice is hereby given that the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

**DATES:** Tuesday, April 25, 2000, 9 a.m.–4 p.m.

**ADDRESSES:** Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

**FOR FURTHER INFORMATION CONTACT:** James Esget, Manager, Yakima River Basin Water Enhancement Project, P.O. Box 1749, Yakima, Washington 98907, (509) 575–5848, extension 267.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting will be to review water marketing opportunities in the Yakima River Basin and develop recommendations.

Dated: April 6, 2000.

**James A. Esget,**

*Program Manager.*

[FR Doc. 00–9190 Filed 4–12–00; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act and the Clean Air Act

In accordance with Departmental policy and 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in the case captioned *United States* v. *Alcoa Inc.,* Civil Action No. EV0049C–Y/H (S.D. Ind.), was lodged with the United States District Court for the Southern District of Indiana on March 13, 2000. The proposed consent decree addresses violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* and the Clean Air Act, 42 U.S.C. 7401 *et seq.,* by Alcoa Inc. (''Alcoa'') at its primary reduction and secondary aluminum production plant in Newburgh, Warrick County, Indiana, and would resolve the violations alleged in the complaint in the case through the date of lodging of the consent decree.

The proposed consent decree would, among other things, require Alcoa to pay the United States a $2.4 million civil penalty (plus interest on that amount accruing from the date of lodging), implement specified Clean Water Act and Clean Air Act compliance measures, and perform a Supplemental Environmental Project estimated by Alcoa to cost $5.4 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Alcoa Inc.,* Civil Action No. EV0049C–Y/H (S.D. Ind.), and DOJ Reference No. 90–5–2–1–2222.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Southern District of Indiana, 46 East Ohio Street—5th Floor, Indianapolis, Indiana 46204; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Jeffery Trevino (312–886–6729)). A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the referenced case and DOJ Reference Number, and enclose a check for $10.75 (43 pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9156 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 24, 2000, a proposed consent decree in *United States* v. *Azrael et al.,* Action No. WN–89–2898 (D. Md.) was lodged with the United States District Court for the District of Maryland.

In this action, the United States is recovering past and future response costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* in connection with the Kane and Lombard Superfund Site (''Site''), located in Baltimore, Maryland.

The consent decree that was lodged would resolve the United States' claims against J.W. Parker & Sons (''Parker''). Parker will pay to the United States $82,200, over two years, including interest, and $54,800, over two years, including interest, to the State of Maryland to resolve claims against it.

The consent decree includes covenants not to sue by the United States under Section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Azrael,* D.J. Ref. 90–11–2–299.

The proposed consent decree may be examined at the Office of the United States Attorney, 101 W. Lombard St., Baltimore, Maryland 21201 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Walker B. Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9154 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 31, 2000, the United States of America, on behalf of the United States Environmental Protection Agency (''EPA''), in a civil action styled *United States* v. *Boomsnub,* Civil Action No. 97–5719–FDB (W.D. Wash.), the United States lodged with the United States District Court for the Western District of Washington a Consent Decree with defendants the Boomsnub Corporation, Edward Takitch and the Estate of Jason Niblett resolving the United States' claims in this action.

The Consent Decree requires the defendants to pay $2,064,874.88 incurred by the United States on behalf of EPA in response to releases of hazardous substances at the Boomsnub Superfund Site in Vancouver, Washington. The Consent Decree also requires the defendants to liquidate certain properties and pay the proceeds to the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boomsnub,* DOJ Ref. #90–11–2–1018a.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9158 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 5, 2000, two proposed consent decrees in *United States* v. *Greenwood Chemical Company*, Civ. Action No. 97–0147 (W.D. Va.), were lodged with the United States District Court for the Western District of Virginia.

In this action, the United States is recovering past and future response costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* in connection with the Greenwood Chemical Company Superfund (''Site''), located in Albemarle County, Virginia.

The consent decrees that were lodged would resolve the United States' claims against two of the four defendants. The first defendant, Albert Cereghino, will pay $90,000 to the United States and $10,000 to the Commonwealth of Virginia to resolve claims against it. The second defendant, Greenwood Chemical Company, will pay $1,000 to the United States and also will agree that the United States' lien on the Site shall remain in effect after the settlement.

The consent decrees include covenants not to sue by the United States under sections 106 and 107 of CERCLA, and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Greenwood Chemical Company* , D.J. Ref. 90–11–679. Comments may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decrees may be examined at the Office of the United States Attorney, Thomas B. Mason Building, 105 Franklin Rd., SW, Suite One, Roanoke, VA 24011 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of

$13.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9160 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy and 28 C.F.R. 50.7, the Department of Justice gives notice that on April 3, 2000, a proposed Stipulation and Agreed Order Concerning Settlement was lodged with the United States District Court for the Eastern District of Michigan in the case captioned *United States* v. *Libra Industries, Inc. of Michigan,* Case No. 99–73771 (E.D. Mich.). The proposed Stipulation and Agreed Order addresses alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* by Libra Industries, Inc. of Michigan (''Libra'') at its institutional dry cleaning facility in Jackson, Michigan, and would provide for dismissal of the claims asserted in the Complaint in the case on terms specified in the Stipulation and Agreed Order. The proposed Stipulation and Agreed Order would require Libra to pay the United States a $4,000 civil penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of the publication, comments relating to the proposed Stipulation and Agreed Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Libra Industries, Inc. of Michigan,* Case No. 99–73771 (E.D. Mich), and DOJ Reference No. 90–5–2–1–06355.

The proposed Stipulation and Agreed Order may be examined at: (1) the Office of the United States Attorney for the Eastern District of Michigan, 231 W. Lafayette Street, Detroit, MI 48226; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Larry Johnson (312–886–6609)). A copy of the proposed Stipulation and Agreed Order may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the referenced case and DOJ Reference Number, and enclose a check for $1.50 (6 pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9157 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 14, 2000, a complaint and proposed Consent Decree (''Decree'') in *United States* v. *the Lockheed Martin Corporation* (D. CO.), Civil Action No. 00–S–562, was lodged with the United States District Court for the District of Colorado.

The United States filed this action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607 and 9613, and RCRA, 42 U.S.C. 6901 *et seq.* In the complaint, the United States Air Force (''USAF'') seeks, among other things, contribution from Lockheed Martin Corporation (''LMC'') for costs incurred and to be incurred by the USAF for response actions at the PJKS National Priorities List site in Jefferson County, Colorado (''Site'').

The proposed consent decree resolves the USAF's CERCLA Sections 107 and 113 claims against LMC and the contribution claims LMC could bring against the USAF under Section 113(f)(1) of CERCLA, 42 U.S.C. 9613(f)(1). The proposed decree provides for a cash payment of $3.5 million over 10 years from LMC to the USAF and clean up services from LMC, specified under separate agreement with the USAF, that could ultimately reduce total clean up costs to the USAF by as much as $35.25 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *the Lockheed Martin Corporation* (D. CO.), and D.J. Ref. #90–11–3–925/1.

The Decree may be examined at the office of the U.S. Attorneys Office for the District of Colorado, 1961 Stout Street, Suite 1200, Denver, CO 80294. A copy of the Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $15.75 for the Decree or (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9155 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert Odabashian, et al.* was lodged with the United States District Court for the Western District of Tennessee on March 31, 2000 (95–2361 G/Bre). On November 5, 1995, the United States filed a First Amended Complaint pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended, against five defendants. The First Amended Complaint alleges that the defendants are liable under section 107 of CERCLA for costs incurred by the United States Environmental Protection Agency during a cleanup of the Pulvair Corporation Superfund Site in Millington, Tennessee. Subsequently, defendants filed various third-party complaints seeking contribution from various third-party defendants. The proposed Consent Decree settles the liability of three original defendants and twelve third-party defendants. Under the Consent Decree, the Settlors agree to reimburse the United States in the amount of $1,932,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States* v. *Robert Odabashian, et al.,* DOJ Ref. #90–11–3–1474.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Suite 410, 200

Jefferson Avenue, Memphis, TN 38103, and at the office of the Environmental Protection Agency, Region, 4, 61 Forsyth Street, SW., Atlanta, GA 30303. A copy of the proposed Consent Decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9153 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with Departmental policy, 28 U.S.C. 50.7, notice is hereby given that on March 22, 2000, a proposed Consent Decree in *United States* v. *S.B. Foot Tanning Company,* (''Foot'') Civil Action No. *2–99CV–325–J,* was lodged with the United States District Court for the Northern District of Texas.

In this action the United States sought injunctive relief and civil penalties for alleged violations of the Clean Water Act (''CWA'') and the discharge prohibitions of the applicable pretreatment standards established pursuant to section 307(b) of the CWA, 33 U.S.C. 1317(b), namely part 425, subpart F, Leather Tanning and Finishing Point Source Category, pretreatment standards at 40 CFR 425.65, at Foot's Cactus, Texas facility. The Consent Decree provides for Foot's payment of a civil penalty to the United States in the amount of $510,439.60, requires injunctive relief to bring Foot into compliance with the Clean Water Act, and requires Foot to implement and complete two Supplemental Environmental Projects (''SEPs'') costing in the aggregate $864,000 in capital costs and $12,500 in annual operations and maintenance costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *S.B. Foot Tanning Company,* DOJ Ref. #90–5–1–1–4497.

The Consent Decree may be examined at the office of the United States Attorney, Northern District of Texas, 500 South Taylor, Suite 300, Lobby Box 238, Amarillo, Texas 79101–2442; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box &7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9151 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree in Clean Air Act Action

In accordance with the Department Policy, 28 CFR 50.7, notice is hereby given that a Modified Consent Decree in *United States* v. *Sun Company, Inc., and Atlantic Refining and Marketing Corp.*, Civil Action No. 94–CV–3246, was lodged with the United States District Court for the Eastern District of Pennsylvania on March 30, 2000. This Consent Decree resolves the United States' claims against defendants Sun Company, Inc. (now known as ''Sunoco, Inc.'') and Atlantic Refining & Marketing Corp. for alleged violations of a Consent Decree entered by the court in 1994, resolving alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, occurring at defendants' South Philadelphia refinery. The Modified Consent Decree requires the defendants to pay a stipulated penalty of $460,000 and to comply with the terms of the Modified Consent Decree.

The Department of Justice will accept written comments on the proposed Modified Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Sun Company, Inc., and Atlantic Refining and Marketing Corp.*, DOJ #90–5–2–1–1744A.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA, 12th Floor, 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may be obtained by mail from the United States Department of Justice, Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the amount of $8.75, and please reference to *United States* v. *Sun Company, Inc., and Atlantic Refining and Marketing Corp.*, DOJ #90–5–2–1–1744A.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, Department of Justice.*

[FR Doc. 00–9152 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 24, 2000 a proposed consent decree in Civil Action No. 00–T–363–N was lodged with the United States District Court for the Middle District of Alabama, Northern Division.

In this action the United states sought injunctive relief and recovery of future response costs under sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the TH Agriculture & Nutrition Superfund Site in Montgomery, Alabama (''the Site'').

Under a proposed consent Decree, TH Agriculture & Nutrition, L.L.C, the present owner and operator of the Site, Astro Packaging Inc., the present owner and former operator, Elf-Atochem North America Inc., and Industrial Chemicals Inc., former owner and operators of the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's future response costs in settlement of the government's claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period for thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the

Environment and Natural Resources Division, Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *TH Agriculture & Nutrition, L.L.C Elf Atochem North America Inc., Industrial Chemicals Inc., and Astro Packaging, Inc.* (M.D. AL), DOJ # 90–1–3–1426/1.

The proposed consent decree may be examined at the Office of the United States Attorney, Montgomery, Alabama, the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of 25 cents per page for reproduction costs, payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–9159 Filed 4–12–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Energy Fuels Coal, Inc.**

[Docket No. M–2000–020–C]

Energy Fuels Coal, Inc., P.O. Box 459, 1190 County Rd 92, Florence, Colorado 91226 has filed a petition to modify the application of 30 CFR 75.1909(1) (nonpermissible diesel-powered equipment; design and performance requirements) to its Southfield Mine (I.D. No. 05–03455) located in Fremont County, Colorado. The petitioner proposes to use a diesel engine to power its genset. The petitioner proposes to use the diesel-powered genset to move equipment from section to section, and to power a roof bolter used in roof rehabilitation in remote areas of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**2. Sugar Camp Coal, LLC**

[Docket No. M–2000–021–C]

Sugar Camp Coal, LLC, 1055 Barrett Cemetery Road, Equality, Illinois 62934 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Willow Lake Mine (I.D. No. 11–03054) located in Saline County, Illinois. The petitioner requests a modification of the standard to allow air coursed through belt haulage entries to be used to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system in the supply road with branches extended to the belt line at certain locations as an early warning fire detection system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**3. Black Beauty Coal Company**

[Docket No. M–2000–022–C]

Black Beauty Coal Company, P.O. Box 176, Wheatland, Indiana 47597 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Air Quality Mine (I.D. No. 12–02010) located in Knox County, Indiana. The petitioner proposes to limit the minimum speed of the grader to less than 10 mph, provide training for the grader operators on lowering the moldboard for additional stopping capability in emergency situations, and on recognizing the appropriate speeds to use on different roadway conditions and slopes, instead of installing front wheel brakes on its ''Getman'' six-wheeled grader. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**4. Crystal Fuels Company**

[Docket No. M–2000–023–C]

Crystal Fuels Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its No. 1 Mine (I.D. No. 46–03408) located in Mingo County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries as an early warning fire detection system instead of using a monitoring systems that identify each belt flight. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**5. Webster County Coal, LLC**

[Docket No. M–2000–024–C]

Webster County Coal, LLC, 2668 Street, Rt. 120 E., Providence, Kentucky 42450 has filed a petition to modify the application of 30 CFR 75.333 (ventilation controls) to its Dotiki Mine (I.D. No. 15–02132) located in Webster County, Kentucky. The petitioner requests a modification of the standard to permit a temporary stopping in the return stopping line, outby the section tailpiece, for a short period of time prior to the section moving from entries to rooms instead of using a permanent type stopping. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety to the miners.

**6. West Ridge Resources, Inc.**

[Docket No. M–2000–025–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to install devices such as gear lock-outs on its diesel grader to limit the speed to a maximum of 10 miles per hour when the grader is operating in an underground coal mine or on the surface of an underground coal mine, and provide training to every miner who operates the grader on the proper techniques for lowering the blade to restrict the speed and to stop the grader, on the proper gear selection for grading, and on the proper speed for grading. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**7. Andalex Resources, Inc.**

[Docket No. M–2000–026–C]

Andalex Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Aberdeen Mine (I.D. No. 42–02028) and its Pinnacle Mine (I.D. No. 42–01474) both located in Carbon County, Utah. The petitioner proposes to install devices such as gear lock-outs on its diesel grader in order to limit the speed to a maximum of 10 miles per hour when the grader is operating in an underground or on the surface of an underground coal mine, and provide

training to every miner who operates the grader on the proper techniques for lowering the blade to restrict the speed and to stop the grader, on the proper gear selection for grading, and on the proper speed for grading. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 15, 2000. Copies of these petitions are available for inspection at that address.

Dated: March 28, 2000.

**Carol J. Jones,**

*Director, Office of Standards Regulations, and Variances.*

[FR Doc. 00–9023 Filed 4–12–00; 8:45 am]

BILLING CODE 4510–43–U

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting of the Operations and Regulations Committee of the Board of Directors

**ACTION:** The Operations and Regulations Committee meeting scheduled for 2:30 p.m. on April 14, 2000 has been CANCELED.

**CONTACT PERSON FOR INFORMATION:** Victor M. Fortuno, Vice President for Legal Affairs, at (202) 336–8800.

Dated: April 11, 2000.

**Victor M. Fortuno,**

*Vice President for Legal Affairs.*

[FR Doc. 00–9335 Filed 4–11–00; 12:51 pm]

BILLING CODE 7050–01–P

## NATIONAL COMMUNICATIONS SYSTEM

### National Security Telecommunications Advisory Committee

**AGENCY:** National Communications System (NCS).

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the President's National Security Telecommunications Advisory Committee will be held on Tuesday, May 16, 2000, from 9 a.m. to 11:30 a.m. The Business Session will be held at the Broadmoor Hotel, Colorado Springs, Colorado.

The agenda is as follows:

—Call to Order
—Opening Remarks
—Information Assurance in the 21st Century Briefing
—Perspectives on Importance of Operational Information Sharing to the Success of PDD–63 Implementation Briefing
—Evolution of U.S. Space Command's Role in Information Operations Briefing
—National Communications System Manager's Report
—Industry Executive Subcommittee Report
—Adjournment

Due to the potential requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

**FOR FURTHER INFORMATION CONTACT:** Telephone (703) 607–6209 or write the Manager, National Communications System, 701 South Court House Road, Arlington, VA 22204–2198.

**Frank McClelland,**

*Technology and Programs Division (N2).*

[FR Doc. 00–9210 Filed 4–12–00; 8:45 am]

BILLING CODE 5001–08–M

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Public Law 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to these permit applications by May 13, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 306–1030.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

**1. Applicant**

Permit Application No. 2001–007.

Rudof S. Scheltema, Biology Department, MS34, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543.

*Activity for Which Permit Is Requested*

Introduce non-indigenous species into Antarctica.

The applicant proposes use *Thalassiosera pseudonana, Isochryois galbana,* and *Dunaliella tertiolecta* cultures of unicellular algae in rearing zooplankton organisms. Indigenous zooplankton will be collected in antarctic waters and reared in the laboratory onboard ship, using the above named unicellular algae as food. The study will deal with the history of antarctic organisms, in particular with the larvae of benthic organisms. The larval life history is especially important in understanding the demography of bottom organisms. At the completion of the study, the algal cultures will be disposed of by heat sterilization.

*Location*

Onboard R/V LAURENCE M. GOULD research vessel in the region of the South Shetland Islands.

*Dates*

May 15, 2000 to June 15, 2000.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 00–9183 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Advanced Computational Infrastructure and Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Advanced Computational Infrastructure & Research (1185)

*Date and Time:* April 19, 2000—8:30 a.m.–5 p.m.

*Place:* Rm. 1150, NSF, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed

*Contact Person:* Dr. Stephen Elbert, Program Director, Partnerships for Advanced Computational Infrastructure Program, Directorate for Computer and Information Science and Engineering, Room 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1963.

*Purpose of Meeting:* To provide recommendations and advice concerning TeraScale Proposals submitted to NSF for funding.

*Agenda:* To review and evaluate TeraScale Proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. If discussions are open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9199 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Biological Sciences (1754).

*Date/Time:* June 14–916, 2000; 8 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 310, 320, 330, 360, 365 and 370, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Joann Roskoski, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1480.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support

*Agenda:* To review and evaluate Biocomplexity: Special Competition proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9201 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemical and Transport Systems (1190).

*Date and Time:* May 24, 2000, 8 a.m. to 4:30 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 110, Arlington, VA 22230

*Type of Meeting:* Closed.

*Contact Person:* Dr. Geoffrey Prentice, Program Director, Kinetics, Catalysis & Molecular Processes, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review progress on the FY 1999 XYZ on a Chip Grants and to discuss emerging areas in the field.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9203 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Civil and Mechanical Systems (1205).

*Date and Time:* May 8, 2000 and May 9, 2000, 8 a.m. to 5 p.m.

*Place:* NSF, 4201 Wilson Boulevard, Room 530 and 580, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Joy Paushcke, Program Director, National Earthquake Engineering Simulation Program, Room 545, (703) 306–1361.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY'00 National Earthquake Engineering Simulation Review Panel proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9205 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Developmental Mechanisms; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Advisory Panel for Developmental Mechanisms (1141)

*Date/Time:* April 26–28, 2000, 8:30 a.m.—5 p.m.

*Place:* NSF, Room 360, 4201 Wilson Blvd., Arlington, VA

*Type of Meeting:* Part-open

*Contact Persons:* Dr. Judity Plesset and Dr. Susan Singer, Program Directors, Developmental Mechanism, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1417

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda:* Open Session: April 28th, 2000; 9 a.m. to 10 a.m.—discussion on research trends, opportunities and assessment procedures in Integrative Biology and Neuroscience with Dr. Mary Clutter, Assistant Director, Directorate for Biological Sciences.

Closed Session: April 26th, 2000, 8:30 a.m. to 6 p.m.; April 27th, 2000, 8:30 a.m. to 6 p.m.; April 28th, 2000, 8:30 a.m. to 9 a.m. and 10 a.m. to 5 p.m. To review and evaluate the Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9204 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Earth Sciences Proposal Review Panel (1569).

*Date/Time:* May 3–5, 2000, 8:00 a.m. to 6:00 p.m.

*Place:* IRIS Data Management Center, Seattle Washington.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1558.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Manager Officer.*

[FR Doc. 00–9197 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Electrical and Communications Systems (1196).

*Dates:* April 21, 2000; 8:30 a.m.–5 p.m.

*Place:* Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Dr. Marija Ilic, Program Director, Control, Networks, and Computational Intelligence (CNCI), 4201 Wilson Boulevard, Room 675, Arlington, Virginia 22230, Phone 703–306–1339.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning research and education agenda for Electric Power Systems.

*Agenda:* Identify key research and education areas of critical relevance for electric power industry.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9195 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Electrical and Communications systems (1196)

*Dates:* April 27–28, 2000; 8:30 a.m.–5 p.m.

*Place:* Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Paul Werbos, Program Director, Control, Networks, and Computational Intelligence (CNCI), 4201 Wilson Boulevard, Room 675, Arlington, Virginia 22230, Phone 703–306–1339.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* Review and evaluate **Regular Research** proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.552b(c),(4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9194 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Engineering: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

*Name:* Advisory Committee for Engineering (#1170)

*Date/Time:* May 9, 2000; 1 p.m.–5 p.m.;, May 10, 2000; 8:30 a.m.–5 p.m.

*Place:* Room 1235 (National Science Board Meeting Room), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Open

*Contact Person:* Dr. Elbert L. Marsh, Deputy Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 306–1301; email: emarsh@nsf.gov. For easier building access, individuals planning to attend should contact Maxine Byrd at 703–306–1300 or at *mbyrd@nsf.gov* so that your name can be added to the building access list.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

*Agenda:* The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9192 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis panel in Engineering Education and Centers (173)

*Date and Time:* May 15 & 16, 2000, 8:30 AM–5:30 PM

*Place:* National Science Foundation, Room 310, 4201 Wilson Blvd, Arlington, VA

*Type of Meeting:* Closed

*Contact persons:* Dr. Ernest T. Smerdon, Senior Education Associate, Engineering, Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1380

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Action Agenda Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9200 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Geosciences (1755)

*Dates:* May 1, 2000; 8:30 a.m.—5:30 p.m. May 2, 2000; 8:00 a.m.—3:30 p.m.

*Place:* Room 1235, National Science Foundation, 44201 Wilson Boulevard, Arlington, VA

*Type of Meeting:* Open

*Contact Person:* Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone 704–306–1502

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

*Agenda:*

Environmental Initiative Information Technology Research Initiative
GPRA Update
GEO Education, Human Resources and Diversity
GEO 2000 and future issues.

**Note:** A detailed agenda will be posted on the NSF web page approximately one week prior to the meeting on http://www.geo.nsf.gov/adgeo/advcomm/start.htm

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9198 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel for Geosciences (1756)

*Date/Time:* May 2, 2000; 8:30 a.m. to 5:30 p.m.

*Place:* Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230

*Type of Meeting:* Closed

*Contact Person:* Ms. Robin Reichlin, Program Director, Geophysics Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1556.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate cooperative studies of the earth's deep interior proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9196 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Committee of Visitors for the Division of Human Resource Developments Program of Gender Equity (PGE) in SMET and Program for Persons with Disabilities (PPD)

*Date and Time:* Wednesday, May 3rd, 2000, 8:30 am—5:30 pm, Room 830 (Open); Thursday, May 4th, 2000, 8:30 am–1 pm, Room 830 (Open); Thursday, May 4th, 2000, 1 pm–3:30 pm (Closed); Thursday, May 4th, 2000, 3:30 pm–5:30 pm (Open).

*Place:* 4201 Wilson Boulevard, Rooms 830, Arlington, VA 22230.

*Type of Meeting:* Part Open (see agenda, below)

*Contact Person:* Drs. Lawrence Scadden, Margrete S. Klein and Ruta Sevo, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1637.

*Purpose of Meeting:* To carryout a Committee of Visitors (COV), review of the PGE and PPD programs over the past three fiscal years, including program evaluation, examination of decisions on proposals, reviewer comments, and to access other privileged information.

*Agenda:* Wednesday, May 3rd, 2000, 8:30am–5:30pm, Room 830 (Open) Thursday, May 4th, 2000, 8:30 am–1 pm, Room 830 (Open) Thursday, May 4th, 2000, 1 pm–3:30 pm, Closed review of privileged documents Thursday, May 4th, 2000, 3:30 pm–5:30 pm, Open discussions on the impact of projects funded and an evaluation of the programs. Session is open to meet requirements of Government Performance and Results Act (GPRA).

*Reason for Closing:* During the closed session, the COV will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. Such deliberation are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9202 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Systematic and Population Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following

meetings of the Advisory Panel for Systematic and Population Biology (1753):

*Date/Time:* April 12–14, 2000; 8 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Rooms 380 and 390, Arlington, VA 22230.

*Contact Person:* Dr. Elizabeth Lyons, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

*Agenda:* To review and evaluate Population Biology proposals as part of the selection process for awards.

*Date/Time:* April 26–28, 2000; 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

*Contact Person:* Dr. Mary McKitrick, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

*Agenda:* To review and evaluate Systematic Biology proposals as part of the selection process for awards.

*Purpose of Meetings:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Type of Meetings:* Closed.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–9193 Filed 4–12–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**DATE:** Weeks of April 10, 17, 24, May 1, 8, and 15, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of April 10**

There are no meetings scheduled for the Week of April 10.

**Week of April 17—Tentative**

There are no meetings scheduled for the Week of April 17.

**Week of April 24—Tentative**

There are no meetings scheduled for the Week of April 24.

**Week of May 1—Tentative**

*Tuesday, May 2*

9:30 a.m.
Briefing on Oconee License Renewal (Public Meeting) (Contact: Dave Lange, 301–415–1730)

*Wednesday, May 3*

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

**Week of May 8—Tentative**

*Monday, May 8*

10:00 a.m.
Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokaimura and the Implications on the NRC's Program (Public Meeting) (Contact: Bill Troskoski, 301–415–8076)

*Tuesday, May 9*

8:55 a.m.
Affirmation Session (Public Meeting) (If needed)
9:00 a.m.
Meeting with Stakeholders on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

**Week of May 15—Tentative**

*Tuesday, May 16*

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

**ADDITIONAL INFORMATION:** By a vote of 5–0 on April 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Briefing by the Executive Branch (Closed-Ex. 1)'' be held on April 6, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: April 7, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–9291 Filed 4–11–00; 10:36 am]

**BILLING CODE 7590–01–M**

## OFFICE OF MANAGEMENT AND BUDGET

### Management of Federal Information Resources

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Proposed revision of OMB Circular No. A–130.

**SUMMARY:** The Office of Management and Budget is revising Circular No. A–130, ''Management of Federal Information Resources,'' to implement provisions of the Clinger-Cohen Act (also known as ''Information Technology Management Reform Act of 1996'') and for other purposes. This notice proposes revisions to the sections of the Circular concerning information systems and information technology management to follow more closely provisions of the Clinger-Cohen Act and OMB Circular A–11, which involve the acquisition, use, and disposal of information technology as a capital asset by the Federal government to improve the productivity, efficiency, and effectiveness of Federal programs. It also makes minor technical revisions throughout the Circular (for example, changing ''senior official'' to ''Chief Information Officer''). It proposes a new Appendix II to address ''Information Technology Architectures,'' incorporates OMB guidance regarding computer security into Appendix III, and revises Appendix IV to reflect these changes.

This notice also proposes revisions to the sections of the Circular concerning information management policy to follow more closely the provisions of the current OMB guidance entitled ''Implementation of the Government Paperwork Elimination Act.''

**DATES:** If you wish to comment on the proposed revisions to Circular No. A–

130 please submit your comments no later than Friday, May 19, 2000. Each Department and agency should submit a single coordinated set of comments.

**ADDRESSES:** We welcome electronic comments and will include them as part of the official record. Please send comments electronically to: A–130@omb.eop.gov. You may address hardcopy comments to: Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236 New Executive Office Building, Washington, DC 20503.

*Electronic Availability:* This document is available on the Internet at the OMB web site, http://www.whitehouse.gov/omb/fedreg/index.html and at the CIO Council home page at http://cio.gov. You can also obtain a copy of OMB Circular No. A–11, including the supplement to Part 3, ''The Programming Guide,'' at the OMB web site and the CIO Council web site, or by calling the Budget Review and Concepts Division at OMB at 202–395–3172.

**FOR FURTHER INFORMATION CONTACT:** Tony Frater, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–3785.

**SUPPLEMENTARY INFORMATION:**

## Background

The Clinger-Cohen Act (also known as ''Information Technology Management Reform Act of 1996'') (Public Law 104–106, Division E, codified at 40 U.S.C. Chapter 25) grants to the Director of the Office of Management and Budget (OMB) various authorities for overseeing the acquisition, use, and disposal of information technology by the Federal government, so as to improve the productivity, efficiency, and effectiveness of Federal programs. It supplements the information resources management (IRM) policies contained in the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) by establishing a comprehensive approach to improving the acquisition and management of agency information systems through work process redesign, and by linking planning and investment strategies to the budget process.

The Clinger-Cohen Act establishes clear accountability for IRM activities by creating agency Chief Information Officers (CIOs) with the authority and management responsibility necessary to advise agency heads. Among other responsibilities, CIOs oversee the design, development, and implementation of information systems. CIOs also monitor and evaluate system performance and advise agency heads to modify or terminate those systems. The Clinger-Cohen Act also directs agencies to work together towards the common goal of using information technology to improve the productivity, effectiveness, and efficiency of Federal programs and to promote an interoperable, secure, and shared government wide information resources infrastructure.

To provide agencies with additional guidance on implementing the Clinger-Cohen Act, OMB proposes to revise Circular No. A–130, ''Management of Federal Information Resources'' (61 FR 6428 February 20, 1996), which contains the policy framework for the management of Federal information resources. OMB has issued previous guidance regarding the Clinger-Cohen Act implementation, including; OMB Memoranda M–96–20, ''Implementation of the Information Technology Management Reform Act of 1996;'' M–97–02, ''Funding Information Systems Investments;'' M–97–09, ''Interagency Support for Information Technology;'' M–97–15, ''Local Telecommunications Services Policy;'' M–97–16, ''Information Technology Architectures''. Upon issuance of final revisions to the Circular, OMB will rescind those Memoranda. Future revisions to A–130 will incorporate other related OMB guidance, including issuances on computer security and agency use of electronic transactions.

Since the last revision of this Circular, Congress passed, and the President signed into law, the Electronic Freedom of Information Act Amendments (Public Law 104–231). Among other changes, the E–FOIA Amendments added a new subsection (g) to the FOIA, which reinforces the preexisting requirement in the Paperwork Reduction Act for agencies to maintain an inventory of their major information systems and an information locator service. The E–FOIA Amendments also require agencies to maintain a handbook that explains how persons may obtain public information from the agency pursuant to the FOIA and the PRA. Additional text has been added to this provision in Section 9 to reflect the enactment of the E–FOIA Amendments. Also, Appendix IV has been amended to incorporate the guidance that OMB issued to agencies in April 1998 on implementing the E–FOIA's handbook requirement (OMB Memorandum M–98–09). When this guidance is incorporated into the Circular, OMB will rescind the 1998 Memorandum.

In addition, in late 1997, a lawsuit was filed against several agencies *(Public Citizen* v. *Raines)* alleging that they had not complied with the requirements in the PRA and FOIA for agencies to inventory their information systems. During the course of the litigation, which is ongoing, the argument was advanced by the plaintiff that Congress in the 1995 revisions to the PRA required agencies to maintain an inventory of all of their information systems, rather than only their major information systems. OMB responded by expressing its view that, in revising the PRA in 1995, Congress did not require agencies to inventory all of their information systems. Instead, consistent with the PRA as originally enacted in 1980 and amended in 1986, Congress in 1995 continued to require an agency to inventory its ''major'' information systems. This legislative intent is reflected in Section 3511(a) of the 1995 PRA (which requires an inventory of an agency's major information systems) and also in Section 3506(b)(4), which cross-references that requirement in Section 3511. A continuing PRA focus on the agency's ''major'' information systems is also consistent with the later-enacted 1996 E–FOIA Amendments, in which Congress required agencies to make available to the public their inventories of major information systems.

Finally, in terms of the agency's activities in managing its information resources, which is the overall subject of Section 3506(b), OMB believes that an agency needs to focus its management attention on its ''major'' information systems, and for this reason an inventory that includes those major systems (but not all systems) makes the most sense for improving agency management. Therefore, in addition to reflecting the passage of the E–FOIA Amendments, the proposed revisions to Section 9 also make clearer the agencies' obligations under the PRA and FOIA in this area. These revisions reiterate the pre-existing requirement in Section 9 for each agency to maintain an inventory of its major information systems (these systems may be electronic or paper—the Circular's definition of ''major information systems'' is format neutral). The revisions also clarify that each agency, under Section 3506(b)(4) of the PRA, needs to maintain as well an inventory of its other ''information resources'' (such as personnel and funding) at the level of detail that the agency's managers believe is most appropriate for them to use in their management of the agency's information resources.

**What Sections of Circular No. A–130 Are Proposed for Revision?**

*Section 3.* Authorities. This section is amended to cite, and to incorporate changes necessitated by the Clinger-Cohen Act, the Government Performance and Results Act (GPRA), and Executive Order 13011.

*Section 5.* Background. A discussion of the basic principles and goals of the Clinger-Cohen Act is added.

*Section 6.* Definitions. The terms ''Chief Information Officers Council'' and ''Information Technology Resources Board'' are introduced to reflect the interagency support structures established by Executive Order 13011. The term ''executive agency'' is introduced to reflect the definition found in the Clinger-Cohen Act. The term ''information technology'' is amended to reflect definitional changes made by the Clinger-Cohen Act, and is supplemented by the limiting term ''national security system'' to clearly identify those systems to which the Circular applies. The term ''capital planning and investment control process'' is introduced to assist agencies in the reporting requirements of the Clinger-Cohen Act.

*Section 7.* Basic Considerations and Assumptions. The existing basic considerations and assumptions are supplemented with a modified subsection (i) and new subsection (r) to reflect the relevant goals and purposes of the Clinger-Cohen Act and Executive Order 13011.

*Section 8a.* Information Management Policy. Sections 8a(3) is proposed to be revised to reflect the Government Paperwork Elimination Act (Public Law 105–277, Title XVII), which was enacted in October 1998. OMB issued proposed guidance to implement the GPEA on March 5, 1999 (64 FR 10896), and is preparing the final guidance, to be issued shortly.

*Section 8b.* Information Systems and Information Technology Management. This section is substantially revised to implement the policies of the Clinger-Cohen Act and the principles of Executive Order 13011. Sections 8b(1), 8b(2), 8b(3) have been merged to better integrate requirements under Clinger-Cohen Act, the Government Performance and Results Act (Public Law 103–62), and revisions to OMB Circular A–11.

New section 8b(1) is revised to provide guidance on both strategic and operational IRM planning by integrating the agency's information resources management plans, strategic plans, performance plans, financial management plans, and budget processes, as discussed in OMB Circular A–11, Sec 210.8. This new section outlines three components: selection, control, and evaluation. It is also stresses the need to redesign work processes before making significant investments in automation, and the need to evaluate commercial off-the-shelf ''COTS'' software as part of the capital planning process. Additionally, this section contains revisions that incorporate requirements for IT accessibility by persons with disabilities that had previously resided in the Federal Information Resource Management Regulations (FIRMR, 41 CFR 201).

Section 8b(2), previously 8b(4), is assigned a new heading ''What is an ITA.'' This section is modified, and includes relevant concepts from the previous section. Section 8b(3), previously 8b(5), is modified to promote the structuring of major information systems into modules that will reduce risk, promote flexibility and interoperability, increase accountability, and better match mission needs with current technology and market conditions.

*Section 9.* Assignment of Responsibilities.

Subsection 9a, All Federal Agencies, is changed to reflect the new Chief Information Officer (CIO) position created by the Clinger-Cohen Act, and reflects developments since the Circular was last revised in February 1996.. A new subsection 9a(3) is inserted to reflect CIO responsibilities. Old subsections 9a(3)–(8) are renumbered to become 9a(4)–(9). Existing Section 9a(5)—which would be renumbered as Section 9a(7)—is proposed to be revised to make clearer the agencies' obligations under the Paperwork Reduction Act and the Freedom of Information Act (as discussed above). A new Subsection 9a(10) is added to ensure cross agency cooperation. 9a(11) is added to encourage agencies to permit other agencies to place orders for information technology against its contracts to the extent practicable. Subsections 9a(3), (12), (13), (14), and (15) are added to describe the CIO's responsibilities under the Clinger-Cohen Act.

Subsection 9b, Department of State, is revised to reflect responsibilities described in the Clinger-Cohen Act and Executive Order 13011. These include liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on matters related to information resources management as well as the State Department's advisory role in developing U.S. positions and policies on international information policy and technology issues affecting the Federal government.

Subsection 9c(1), Department of Commerce, is supplemented to reflect that agencies and the Chief Information Officers Council will make recommendations, as appropriate, to the Secretary of Commerce regarding standards development.

Subsection 9e, General Services Administration (GSA), is changed to reflect that with the enactment of the Clinger-Cohen Act, GSA will no longer perform policy and oversight functions. GSA will continue to provide services, training, and assistance as requested by the agencies and OMB.

Subsection 9h, Office of Management and Budget, is changed to reflect that OMB will provide guidance to the Boards established by Executive Order 13011, and may from time to time designate executive agents for government-wide procurement of information technology.

Accordingly, Circular No. A–130 (61 FR 6428, February 20, 1996) is proposed to be amended as set forth below.

**John T. Spotila,**

*Administrator, Office of Information and Regulatory Affairs.*

**Proposed Amendments to OMB Circular No. A–130**

1. Section 3, ''Authorities,'' is revised to read as follows:

3. **Authorities:** This Circular is issued pursuant to the Paperwork Reduction Act (PRA) of 1980, as amended by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35); the Clinger-Cohen Act (also known as ''Information Technology Management Reform Act of 1996'') (Public Law 104–106, Division E); the Privacy Act, as amended (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 *et seq.*); the Federal Property and Administrative Services Act, as amended (40 U.S.C. 487); the Computer Security Act (Public Law 100–235); the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11); Executive Order 12046 of March 27, 1978; Executive Order 12472 of April 3, 1984; and Executive Order 13011 of July 17, 1996.

2. Section 5, ''Background,'' is amended by adding the following new paragraph:

The Clinger-Cohen Act supplements the information resources management policies contained in the PRA by establishing a comprehensive approach for executive agencies to improve the acquisition and management of their information resources, through:

(1) Focusing information resource planning to support the agency's strategic missions;

(2) Implementing a capital planning and investment control process that links to budget formulation and execution; and

(3) Rethinking and restructuring the way agencies do their work before investing in information systems.

3. Section 6, ''Definitions,'' is amended by making the following revisions: definitions are added for ''capital planning and investment control process,'' ''Chief Information Officers Council,'' ''executive agency,'' ''Information Technology Resources Board,'' and ''national security system''. The definition for ''information technology'' is revised, and the remaining definitions are redesignated accordingly. The new and revised definitions are as follows:

c. The term ''capital planning and investment control process '' means a management process for ongoing identification, selection, control, and evaluation of investments in information resources. The process is linked to budget formulation and execution, and is focused on agency missions and achieving specific program outcomes.

d. The term ''Chief Information Officers Council'' (CIO Council) means the Council established in Section 3 of Executive Order 13011.

f. The term ''executive agency'' has the meaning defined in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

t. The term ''information technology'' means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product. The term ''information technology'' includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. The term ''information technology'' does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

u. The term ''Information Technology Resources Board'' (Resources Board) means the board established by Section 5 of Executive Order 13011.

w. The term ''national security system'' means any telecommunications or information system operated by the United States Government, the function, operation, or use of which (1) involves intelligence activities; (2) involves cryptologic activities related to national security; (3) involves command and control of military forces; (4) involves equipment that is an integral part of a weapon or weapons system; or (5) is critical to the direct fulfillment of military or intelligence missions, but excluding any system that is to be administrative and business applications (including payroll, finance, logistics, and personnel management applications). The policies and procedures established in this Circular shall apply to national security systems in a manner consistent with the applicability and related limitations regarding such systems set out in Section 5141 of the Clinger-Cohen Act (Pub. L. 104–106). Applicability of Clinger-Cohen Act to national security systems shall include budget document preparation requirements set forth in OMB Circular A–11. The resultant budget document may be classified in accordance with the provisions of Executive Order 12958.

4. Section 7, ''Basic Considerations and Assumptions,'' is amended by revising Sections 7i and by adding 7r to read as follows:

i. Strategic planning improves the operation of government programs. The agency strategic plan will shape the redesign of work processes and guide the development and maintenance of a capital planning and investment control process. This management approach promotes the appropriate application of Federal information resources.

r. The development and operation of interagency and interoperable shared information resources to support the performance of government missions should be supported by the Chief Information Officers Council and the Information Technology Resources Board.

5. Section 8, ''policy,'' is amended by revising Section 8a(3) to read as follows:

3. Electronic Information Collection. Executive agencies under Sections 1703 and 1705 the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII. are required to provide, by October 21, 2003, the (1) option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) use and acceptance of electronic signatures, when practicable. Agencies will follow the provisions in OMB guidance, Implementation of the Government Paperwork Elimination Act.

6. Section 8, ''Policy,'' is amended by revising Section 8b(1) to read as follows:

b. How Should Agencies Manage Information Systems and Information Technology?

(1) Capital Planning and Investment Control. Agencies must establish and maintain a capital planning and investment control process that links mission needs, information, and information technology in an effective and efficient manner. The process should guide both strategic and operational IRM planning by integrating the agency's information resources management plans, strategic plans prepared pursuant to the Government Performance and Results Act of 1993 (5 U.S.C. 306), performance plans prepared pursuant to Government Performance and Results Act of 1993 (31 U.S.C. 1115), financial management plans prepared pursuant to the Chief Financial Officer Act of 1990 (31 U.S.C. 902a5), and the agency's budget formulation and execution processes. The capital planning and investment control process includes all stages of capital programming, including planning, budgeting, and procurement.

As outlined below in section (B), the capital planning and investment control process has three components: selection, control, and evaluation. The process should be iterative, with inputs coming from the agency strategic plan and the outputs feeding into the budget and investment control processes. The goal is to link resources to results. For further guidance on Capital Planning refer to OMB Circular A–11.

(A) What components are expected in the Information Resources Management Plan? As a product of the capital planning and investment control process, agencies must develop and maintain the agency Information Resource Management Plan (IRM) (also known as the IT Capital Plan), as required by 44 U.S.C. 3506(b)(2). The IRM Plan will include both Strategic and Operational IRM Plans. Specifically, the IRM Plan must include:

(i) A component derived from the agency strategic plan as required by the Government Performance and Results Act. Specifically, an analysis detailing the information resource investment particulars contained within the agency Strategic Plan. These particulars should focus on the strategic implementation of IT to achieve the overall missions and goals of the agency and describe the linkage between the investment and the agency's missions, as required by OMB Circular A–11;

(ii) A component derived from the agency annual performance plan as required by the Government Performance and Results Act. Specifically, an analysis describing the information resource investment particulars contained within the agency annual Performance Plan. These particulars should describe the quantifiable performance measures used in evaluating the implementation of specific IT initiatives and should provide metrics to assess progress towards achieving performance goals;

(iii) A component derived from the agency annual program performance report as required by the Government Performance and Results Act. Specifically, an accountability report comparing actual performance to expected performance as expressed in the annual goals established in the agency Performance Plans. Progress should be detailed in OMB Circular A–11 Exhibit 300B submissions as part of the annual budget process; and

(iv) A component derived from the agency security plan as required by the Computer Security Act. Specifically, the summary plan included in the agency's five-year plan as required by 44 U.S.C. 3505 and Appendix III of this Circular.

(B) What must an agency do as part of the selection component of the capital planning process?

(i) Evaluate each investment in information resources to determine whether the investment will support core mission functions that must be performed by the Federal government;

(ii) Ensure that improvements to existing information systems or the development of

new information systems are initiated because no alternative private sector or governmental source can efficiently support the function;

(iii) Support work processes that have been simplified or otherwise redesigned to reduce costs, improve effectiveness, and make maximum use of commercial, off-the-shelf technology;

(iv) Reduce risk by avoiding or isolating custom designed components, using components that can be fully tested or prototyped prior to production, and ensuring involvement and support of users;

(v) Demonstrate a projected return on the investment that is clearly equal to or better than alternative uses of available public resources. The return may include improved mission performance in accordance with GPRA measures, reduced cost, increased quality, speed, or flexibility; and increased customer and employee satisfaction. The return should be adjusted for such risk factors as the project's technical complexity, the agency's management capacity, the likelihood of cost overruns, and the consequences of under- or non-performance. Return on investment should, where appropriate, be demonstrated by actual returns observed through pilot projects and prototypes;

(vi) Prepare and update a benefit-cost analysis (BCA) for each information system throughout its life cycle. A BCA will provide a level of detail proportionate to the size of the investment; rely on systematic measures of mission performance; and be consistent with the methodology described in OMB Circular No. A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'';

(vii) Prepare and maintain a portfolio of major information systems that monitors investments and prevents redundancy of existing or shared systems. The portfolio should provide information demonstrating the impact of alternative IT investment strategies and funding levels, identify opportunities for sharing resources, and consider the agency's inventory of information resources;

(viii) Ensure consistency with Federal, agency, and bureau information architectures;

(ix) Ensure that improvements to existing information systems and the development of planned information systems do not unnecessarily duplicate information systems within the same agency, from other agencies, or from the private sector;

(x) Ensure that the selected system or process maximizes the usefulness of information, minimizes the burden on the public, and preserves the appropriate integrity, availability, and confidentiality of information throughout its life cycle. This portion shall specifically address the planning and budgeting for the information collection burden imposed on the public as defined by 5 CFR part 1320;

(xi) Establish oversight mechanisms, consistent with Appendix III of this Circular, to systematically evaluate and ensure the continuing security and availability of systems and their data;

(xii) Ensure that Federal information system requirements do not unnecessarily restrict the prerogatives of state, local and tribal governments;

(xiii) Ensure that the selected system or process facilitates accessibility pursuant to the Rehabilitation Act of 1973, as amended (Public Law 105–220, 29 U.S.C.794d).

(C) What must an agency do as part of the control component of the capital planning process?

(i) Institute performance measures and management processes that monitor actual performance compared to expected results. Agencies must use a performance based management system that provides timely information regarding the progress of an information technology investment. The system must also measure progress towards milestones in an independently verifiable basis, in terms of cost, capability of the investment to meet specified requirements, timeliness, and quality;

(ii) Establish oversight mechanisms that require periodic review of information systems to determine how mission requirements might have changed, and whether the information system continues to fulfill ongoing and anticipated mission requirements. These mechanisms must also require information regarding the future levels of maintenance necessary to ensure the information system meets mission requirements cost effectively;

(iii) Ensure that major information systems proceed in a timely fashion towards agreed-upon milestones in an information system life cycle. Information systems must also continue to deliver intended benefits to the agency and customers, meet user requirements, and identify and offer security protections;

(iv) Prepare and update a strategy that identifies and mitigates risks associated with each information system.

(v) Ensure that financial management systems conform to the requirements of OMB Circular No. A–127, ''Financial Management Systems.''

(D) What must an agency do as part of the evaluation component of the capital planning process?

(i) Conduct post-implementation reviews of information systems and information resource management processes to validate estimated benefits and costs, and document effective management practices for broader use;

(ii) Evaluate systems to ensure positive return on investment and decide whether continuation, modification, or termination of the systems is necessary to meet agency mission requirements.

(iii) Document lessons learned from the post-implementation reviews. Redesign oversight mechanisms and performance levels to incorporate acquired knowledge.

(2) What is an ITA? Consistent with Appendix II of this Circular, agencies will create an Information Technology Architectures (ITA). This framework should document linkages between mission needs, information content, and information technology capabilities. An ITA should also guide both strategic and operational IRM planning. It should be supported by a complete inventory of the agency information resources, including personnel, equipment, and funds devoted to information resources management and information technology, at a level of detail appropriate to support the ITA. It should also address steps necessary to create an open systems environment. Agencies will implement the following principles:

(a) Develop information systems that facilitate interoperability, application portability, and scalability of computerized applications across networks of heterogeneous hardware, software, and communications platforms;

(b) Meet information technology needs through cost effective intra-agency and interagency sharing, before acquiring new information technology resources; and

(c) Establish a level of security for all information systems that is commensurate to the risk and magnitude of the harm resulting from the loss, misuse, unauthorized access to, or modification of the information stored or flowing through these systems.

(1) How Should Agencies Acquire Information Technology?

Agencies will:

(a) Make use of adequate competition, allocate risk between government and contractor, and maximize return on investment when acquiring information technology;

(b) Structure major information systems into useful segments with a narrow scope and brief duration. This will reduce risk, promote flexibility and interoperability, increase accountability, and better match mission need with current technology and market conditions;

(c) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented through pilot projects or prototypes; and

(d) Ensure accessibility of acquired information technology pursuant to the Rehabilitation Act of 1973, as amended (Pub. Law 105–220, 29 U.S.C.794d).

7. Section 9, ''Assignment of Responsibilities,'' is amended by making the following revisions to Section 9a, ''All Federal Agencies'': delete subparagraphs (9)–(10), renumber subparagraphs (3)–(8) to become subparagraphs (5)–(10), insert new subparagraphs (3)–(4), revise new subparagraph (7), and insert (11)–(15) to read:

(3) Appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who must report directly to the agency head to carry out the responsibilities of the agencies listed in Executive Order 13011. The head of the agency will consult with the Director of OMB prior to appointing a Chief Information Officer, and will advise the Director on matters regarding the authority, responsibilities, and organizational resources of the Chief Information Officer. For purposes of this paragraph, military departments and the Office of the Secretary of Defense may each appoint one official. The Chief Information Officer shall, among other things:

(a) Be an active participant during all agency strategic management activities,

including the development, implementation, and maintenance of agency strategic and operational plans;

(b) Be an active participant throughout the annual agency budget process in establishing investment priorities for agency information resources;

(c) Advise the agency head on information resource implications of strategic planning decisions;

(d) Monitor and evaluate the performance of information resource investments through a capital planning and investment control process, and advise the agency head on whether to continue, modify, or terminate a program or project;

(e) Advise the agency head on budgetary implications of information resource decisions; and

(f) Advise the agency head on the design, development, and implementation of information resources.

(4) Direct the Chief Information Officer, appointed pursuant to 44 U.S.C. 3506(a), to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the Chief Information Officer will consider alleged instances of agency failure to comply with section 8(a) of this Circular, and recommend or take appropriate corrective action. The Chief Information Officer will report instances of alleged failure and their resolution annually to the Director of OMB, by February 1st of each year.

(7) Maintain the following, as required by the Paperwork Reduction Act (44 U.S.C. 3506(b)(4) and 3511) and the Freedom of Information Act (5 U.S.C. 552(g)): an inventory of the agency's major information systems, holdings, and dissemination products; an agency information locator service; a description of the agency's major information and record locator systems; an inventory of the agency's other information resources, such as personnel and funding (at the level of detail that the agency determines is most appropriate for its use in managing the agency's information resources); and a handbook for persons to obtain public information from the agency pursuant to these Acts.

(11) Ensure that the agency;

(a) cooperates with other agencies in the use of information technology to improve the productivity, effectiveness, and efficiency of Federal programs;

(b) promotes a coordinated, interoperable, secure, and shared government wide infrastructure that is provided and supported by a diversity of private sector suppliers; and

(c) develops a well-trained corps of information resource professionals.

(12) Use the guidance provided in OMB Circular A–11, ''Planning, Budgeting, and Acquisition of Fixed Assets,'' to promote effective and efficient capital planning within the organization;

(13) Ensure that the agency provides budget data pertaining to information resources to OMB, consistent with the requirements of OMB Circular A–11,

(14) Permit, to the extent practicable, the use of one agency's contract by another agency or the award of multi-agency contracts, provided the action is within the scope of the contract and consistent with OMB guidance; and

(15) As designated by the Director of OMB, act as executive agent for the government-wide acquisition of information technology.

8. Section 9, ''Assignment of Responsibilities,'' is further amended by revising Section 9b, ''Department of State,'' to read as follows:

b. Department of State. The Secretary of State will:

(1) Advise the Director of OMB on the development of United States positions and policies on international information policy and technology issues affecting Federal government activities and the development of international information technology standards; and

(2) Be responsible for liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on all matters related to information resources management, including federal information technology. The Secretary will also ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international standards and recommendations affecting information technology. These responsibilities may also require the Secretary to consult, as appropriate, with affected domestic agencies, organizations, and other members of the public.

9. Section 9, ''Assignment of Responsibilities'' is further amended by making the following revision to Section 9c, ''Department of Commerce'': Subparagraph (1) is revised to read as follows:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology while taking into consideration the recommendations of the agencies and the Chief Information Officers Council;

10. Section 9, ''Assignment of Responsibilities,'' is further amended by making the following revisions to Section 9e, ''General Services Administration'': subparagraphs (1) through (5) are deleted, subparagraph (6) is renumbered as subparagraph (7); and the following new subparagraphs are added after the introductory text:

(1) Continue to manage the FTS2001 program and coordinate the follow-up to that program, on behalf of and with the advice of agencies;

(2) Develop, maintain, and disseminate for the use of the Federal community (as requested by OMB or the agencies) recommended methods and strategies for the development and acquisition of information technology;

(3) Conduct and manage outreach programs in cooperation with agency managers;

(4) Be a liaison on information resources management (including Federal information technology) with State and local governments. GSA will also be a liaison with non-governmental international organizations, subject to prior consultation with the Secretary of State to ensure consistency with the overall United States foreign policy objectives;

(5) Support the activities of the Secretary of State for liaison, consultation, and negotiation with intergovernmental organizations on information resource management matters;

(6) Provide support and assistance to the CIO Council and the Information Technology Resources Board.

11. Section 9, ''Assignment of Responsibilities,'' is amended by making the following revisions to Section 9h, ''Office of Management and Budget'': Subparagraph (10) is deleted, subparagraphs (11) and (12) are renumbered as subparagraphs (10) and (11), and the following new subparagraphs are added at the end:

(12) Evaluate agency information resources management practices and programs and, as part of the budget process, analyze, track, and evaluate the risks and results of major capital investments in information systems;

(13) Notify an agency if OMB believes that a major information system project requires outside assistance;

(14) Provide guidance on the implementation of the Clinger-Cohen Act and on the management of information resources to the executive agencies, to the CIO Council, and to the Information Technology Resources Board; and

(15) Designate one or more heads of executive agencies as executive agent for government-wide acquisitions of information technology.

**Proposed Appendix II to OMB Circular No. A–130—Information Technology Architecture**

This Appendix defines the minimum criteria for an agency Information Technology Architecture (ITA). Many agencies have already developed frameworks and methodologies guiding the development, implementation, and maintenance of an ITA. Therefore this guidance is intended to ensure that as agencies complete or update their ITA, critical information is included.

An IT architecture in compliance with the Clinger-Cohen Act and OMB guidance will contain an Enterprise Architecture and a Technical Reference Model and Standards Profile.

*What Is an Enterprise Architecture?*

An Enterprise Architecture is the explicit description of the current and desired relationships among business and management processes and information technology. It describes the ''target'' environment which the agency wishes to create and maintain by managing its IT portfolio. The Enterprise Architecture must also provide a strategy that will enable the agency to transition from its current to its target environment. Within the Enterprise Architecture it is important that agencies identify and document: (1) the business processes, (2) the information flow and

relationships, (3) applications, (4) data descriptions, and (5) technology infrastructure, as follows:

1. Business Processes—Agencies must identify the work performed to support its mission, vision and performance goals. Agencies must also document change agents, such as legislation or new technologies, that will drive changes in the Enterprise Architecture.

2. Information Flow and Relationships—Agencies must analyze the information utilized by the agency in its business processes, identifying the information used and the movement of the information. These information flows indicate where the information is needed and how the information is shared to support mission functions.

3. Applications—Agencies must identify, define, and organize the activities that capture, manipulate, and manage the business information to support business processes. It also describes the logical dependencies and relationships among business activities.

4. Data Descriptions and Relationships—Agencies must identify how data is created, maintained, accessed, and used. At a high level, agencies define the data and describe the relationships among data elements used in the agency's information systems.

5. Technology Infrastructure—Agencies must describe and identify the functional characteristics, capabilities, and interconnections of the hardware, software, and telecommunications.

*What Are the Technical Reference Model and Standards Profile?*

Technical Reference Model (TRM)—A TRM identifies and describes the information services (such as database, communications, intranet, etc.) used throughout the agency.

Standards—Agencies should define the set of IT standards that support the services articulated in the TRM. Agencies are expected to adopt standards necessary to support the entire Enterprise Architecture, and must be enforced consistently throughout the agency.

## Proposed Revisions to Appendix IV to OMB Circular No. A–130—Analysis of Key Sections

Revise Section 8a(5) to include:

As described in Section 11 of the ''Electronic Freedom of Information Act Amendments of 1996'' (Public Law 104–231), an agency must place its index and description of major information and record locator systems in its reference material or guide. We expect that this index and description would include an agency's Government Information Locator Service (GILS) presence as well as any other major information and record locator systems the agency has identified.

In addition, each agency should prepare a handbook that describes in one place the various ways by which a person can obtain public information from the agency, as well as the types and categories of information available. In preparing the handbook, each agency should review the dissemination policies contained in this Circular. The handbook should be in plain English and user-friendly. Where applicable, it should indicate that the public is encouraged to access information electronically via the agency's home page or to search in its reading room, and that the public may also submit a request to the agency under the Freedom of Information Act. ''Types and categories'' of available information will vary from agency to agency, and agencies should describe their information resources in whatever manner seems most appropriate.

Although the law does not require that the handbook be available on-line, OMB encourages agencies to do so as a matter of policy. The handbook should include the following elements:

1. The location of reading rooms within the agency and within its major field offices, as well as a brief description of the types and categories of information available.

2. The location of the agency's World Wide Web home page.

3. A reference to the agency's FOIA regulations and how to get a copy.

4. A reference to the agency's FOIA annual report and how to get a copy.

5. The location of the agency's GILS page.

6. A brief description of the types and categories of information generally available from the agency.

In addition, if there is an on-line version, it should have electronic links to these elements wherever they exist.

Section 8b(1)

*What is the capital planning and investment control process?*

The capital planning and investment control process is a systematic approach to managing the risks and returns of IT investments. The process has three phases: select, control and evaluate. The process covers all stages of capital programming, including planning, budgeting and procurement. For additional information describing capital planning, please consult Circular A–11.

*Where can I get more information about return on investment (ROI)?*

Agencies that would like to learn more about compiling and demonstrating projected return on investments (ROI) are encouraged to consult the Federal CIO Council document ''ROI and the Value Puzzle''. This document may be obtained at the CIO Council's web page (http://cio.gov).

*How should agencies incorporate security into management of information resources?*

Effective security is an essential element of all information systems. A process assuring adequate security must be integrated into the agency's management of information resources. This process should be a component of the both capital planning process and the information technology architecture. A system's security requirements must be supported by the agency ITA in order for it to be considered during the select phase of the capital planning process. Agencies will use the control and evaluate phases of capital planning to ensure these security requirements are met throughout the system's life cycle. For more information on computer security please read Appendix III of this Circular.

*How will agencies use the information collected during the capital planning process?*

As a quick guide, this table summarizes the information trail and describes how certain types of information will be utilized throughout the capital planning process.

| Required information | Components of the capital planning process | | |
|---|---|---|---|
| | Select (planned) | Control (actual) | Evaluate (variance) |
| Justification and descriptive information. | Provided as part of the pre-screening process and documents the business case justification for the investment. | Reviewed and reported systematically to ensure business needs are being met. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |

| Required information | Components of the capital planning process | | |
|---|---|---|---|
| | Select (planned) | Control (actual) | Evaluate (variance) |
| Summary of spending by project stages, cost, schedule, and performance goals. | Provided as part of the initial planning and budgeting process using a work break-down process. The summary reflects a life cycle project management approach for all stages of the investment, and is structured using a performance based management process (such as earned value management). | Reviewed systematically to ensure that costs and scheduled goals are on target. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |
| Program management and contracting information. | Provided as part of the planning phase and includes information such as type of contract, and acquisition planning information. | Reviewed systematically to ensure that contract and acquisition goals are on target. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |
| Financial Basis for the project ..... | Details financial analysis such as benefits-cost analysis (BCA), return on investment and other financial analysis performed to justify the investment. | Reviewed and updated systematically to capture the latest information on ROI and benefits and to track financial performance. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |
| Performance measures and goals .. | Provided prior to the selection of the project and establishes the baseline for performance measures and goals whereby the investment will be monitored. | Monitored and reported systematically for performance goals and the progress of meeting the business goals and needs of an agency. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |
| Costs and schedule goals ..... | Provided as part of the initial planning and budgeting process using a work break-down process. The goals reflect a life-cycle project management approach for all stages of the investment and is structured using an earned value management process. | Updated systematically to ensure that the investment is earning at the planned rate. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |
| Risks ..... | Risk assessments are performed and mitigation plans are provided as part of the initial planning phase. Assessments must address technology, security, strategic issues, and IT architecture. Risks Assessments may also address the risk of not continuing a project. | Reviewed and updated systematically to gauge effectiveness of the mitigation plans and to identify any new risks that may arise. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |
| Benefits associated with the investment. | Benefits can be either financial or non-financial and may also be cost avoidance. The expected benefits are captured as part of the initial planning phase of an investment. | Updated systematically to further strengthen the business case for the investment or its continuance and to ensure that the benefits are realized. | Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B). |

Section 8b(2)

*What Is an ITA?*

An Information Technology Architecture (ITA) should guide the agency's management of information resources for agency-wide information and information technology needs consistent with Appendix II of this Circular. The ITA will help the agency cope with technology and business change by serving as a reference for updates to existing and new information systems. The ITA will also assure interoperability of business processes, data, applications and technology as agencies integrate proposed information systems projects with one another and with existing legacy systems. The agency's strategic IRM plan should describe the parameters (*e.g.,* technical standards) of such an ITA. The ITA must also drive operational planning and describe how the agency intends to use information and information technology.

*Where Can I Get More Information Describing the ITA?*

Agencies that require additional information on developing or maintaining an ITA are encouraged to consult the Federal CIO Council document entitled ''The Federal Enterprise Architecture (FEA) Framework'' which is available on the CIO Council's web site (http://cio.gov).

*What Is an Open Systems Environment?*

An open system should be based on an architecture with published or documented interface specifications that have been adopted by a standards settings body.

*Ultimately, Who Determines the Acceptable Level of Security for a System?*

Each agency program official must understand the risk to systems under their control and determine the acceptable level of risk, ensure adequate security is maintained to support and assist the programs under their control, ensure that security controls comport with program needs and appropriately accommodate operational necessities. In addition, program officials should work in conjunction with Chief Information Officers and other appropriate agency officials so that security measures support agency information architectures.

Section 8b(3)

*What Should agencies Consider Before Acquiring a COTS Solution?*

COTS products can provide agencies a cost effective and efficient solution. However, often COTS products require customization for seamless use. Therefore agencies must still thoroughly examine the impact of a COTS product selection. A lessons-learned guide describing the risks of COTS products has been published by the Information Technology Resources Board (ITRB). The guide, entitled ''Assessing the Risks of Commercial-Off-The-Shelf (COTS) Applications,'' is available on the ITRB web site (http://itrb.gov).

Section 9a(3). Chief Information Officer (CIO)

*To Whom Does the CIO Report?*

Each agency must appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who will report directly to the agency's head to carry out the responsibilities of the agency under the PRA.

*What Are the CIO's Responsibilities in Regards to Financial Management Systems?*

The head of the agency is responsible for defining the operating relationship between the CIO and CFO functions and ensuring coordination in the implementation of the Clinger-Cohen Act, the PRA, the Chief Financial Officers Act, and the Government Performance and Results Act. The Clinger-Cohen Act encourages the CIO and CFO to work together under the direction of the agency head to ensure that the agency's information systems provide reliable, consistent, and timely program performance information.

*What Is the CIO's Role in the Capital Planning Process?*

The CIO will ensure that a capital planning process is established and rigorously used to define and validate all information resource investments. Through this process, the CIO shall monitor and evaluate the performance of the information technology portfolio of the agency and advise the agency head whether to continue, modify, or terminate a program or project. The CIO will have accountability and authority over continuation or termination of information resource investments.

Additionally, the CIO will establish a board composed of senior level managers who will have the responsibility of making key business recommendations on information resource investments, and who will be continuously involved. Many agencies will institute a second board, composed of program or project level managers, with more detailed business and information resource knowledge. They will be able to provide technical support to the senior level board in proposing, evaluating, and recommending information resource investments.

*What Is the CIO's Role in the Annual Budget Process?*

The CIO will be an active participant during all agency annual budget processes and strategic planning activities, including the development, implementation, and maintenance of agency strategic plans. The CIO's role is to provide leadership and a strategic vision for using information technology to transform the agency. CIO's must also ensure that all information resource investments deliver a substantial mission benefit to the agency and/or a substantial ROI to the taxpayer.

Additionally, the CIO will ensure coordination of information resource planning processes and documentation with the agency's strategic, performance and budget process.

Section 9a(4)

*Why Is the CIO Considered an Ombudsman?*

The CIO designated by the head of each agency under 44 U.S.C. 3506(a) is charged with carrying out the responsibilities of the agency under the PRA. Agency CIOs are responsible for ensuring that their agency practices are in compliance with OMB policies. It is envisioned that the CIO will work as an ombudsman to investigate alleged instances of agency failures to adhere to the policies set forth in the Circular and to recommend or take corrective action as appropriate. Agency heads should continue to use existing mechanisms to ensure compliance with laws and policies.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24379, 812–11968]**

## Boston 1784 Funds et al., Notice of Application

April 6, 2000.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of an application for an order under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain series of The Galaxy Fund (''Galaxy'') to acquire all of the assets and liabilities of all of the series of Boston 1784 Funds (''1784'')(the''Reorganization''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

**APPLICANTS:** 1784, Galaxy, Fleet National Bank and Fleet Investment Advisors Inc.

**FILING DATES:** The application was filed on February 9, 2000. Applicants agree to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 1, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. 1784, 2 Oliver Street, Boston, MA 02109; Fleet National Bank, 100 Federal Street, Boston, MA 02110; Galaxy, 4400

Computer Drive, Westborough, MA 01581–5108; and Fleet Investment Advisors Inc., 75 State Street, Boston MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

**Applicants' Representations**

1. 1784, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of seventeen series (the ''Acquired Fund'').

2. Galaxy, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy currently offers 29 series, ten of which will participate in the Reorganization (the ''Operating Acquiring Funds''). Galaxy also is organizing seven new shell series, each of which will participate in the Reorganization (the ''Shell Acquiring Funds,'' and together with the Operating Acquiring Funds, the ''Acquiring Funds'').[1] The Acquiring Funds and the Acquired Funds are collectively referred to as the ''Fund.'' Applicants state that the investment objectives, policies and restrictions of each Acquired Fund and its corresponding Acquiring Fund are substantially similar.

3. Fleet National Bank, formerly BankBoston, N.A (''Fleet National''), serves as investment adviser to the Acquired Funds and is exempt from registration pursuant to section 202(a)(11)(A) of the Investment Advisers Act of 1940 (''Advisers Act''). Fleet Investment Advisers Inc. (''Fleet'') is registered under the Advisers Act, and is the investment adviser for the Operating Acquiring Funds and will be the investment adviser for the Shell Acquiring Funds. Fleet National and Fleet and wholly owned subsidiaries of Fleet Boston Corporation.

4. Currently, Fleet National, Fleet and certain of their affiliates that are under common control (the ''Fleet Boston Group'') hold of record, in their names or in the names of their nominees, in excess of 5% (and with respect to certain of the Funds more than 25%) of the outstanding voting securities of certain of the Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain companies of the Fleet Boston Group may, at times, own economic interests in certain money market Funds for their own account.

5. On January 25, 2000 and February 4, 2000, respectively, the boards of trustees of Glaxy (the ''Board of Galaxy'') and 1784 (''Board of 1784''), including all of their disinterested trustees (''Disinterested Trustees''), unanimously approved a plan of Reorganization pursuant to which substantially all of the assets and liabilities of each of the Acquired Funds will be transferred to the corresponding Acquiring Fund in exchange for shares of designated classes of the corresponding Acquiring Fund (the ''Plan of Reorganization'').[2] The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund by the net asset value per share of the corresponding Acquiring Fund class, each computed immediately prior to the effective time of the Reorganization (''Effective Time''). The Acquiring Fund shares will be distributed *pro rata* to the shareholders of record in the applicable Acquired Fund, determined as of the Effective Time. This distribution will be accomplished by issuing the Acquiring Fund shares to open accounts on the share records of the Acquiring Funds in the names of the Acquired Fund shareholders of record. Simultaneously, all issued and outstanding shares of the Acquired Funds will be canceled on the books of the Acquired funds. Each of the acquired Funds thereafter will be dissolved. The Reorganization is expected to occur on or around May 12, 2000. The Plan of Reorganization may be terminated by mutual written consent of the Board of Glaxy and the Board of 1784 any time prior to the Effective Time.

6. The Acquiring Funds and the Acquired Funds consist of: (a) Five money market Funds (the ''Money Market Funds''); and (b) twelve non-money market Funds (the ''Non-Money Market Funds). Each Acquired Fund offers one class of shares. Three classes of shares of the Acquiring Funds (BKB, Trust and shares) will be issued in the Reorganization.[3]

7. As a result of the Reorganization, shareholders of the 1784 Florida Tax-Exempt Income Fund, 1784 Tax-Free Money Market Fund, and 1784 Institutional U.S. Treasury Money Market Fund will receive shares of the corresponding Acquiring Fund, each of which offers a single class of shares (''Shares''). Shareholders of the remaining Acquired Funds will receive either BKB shares or Trust shares of the corresponding Acquiring Fund. Shareholders who purchased shares of the remaining Acquired Funds through an investment management, trust, custody, or other agency relationship with Fleet National (''Institutional Shareholders'') will receive Trust shares of the corresponding Acquiring Fund. All other shareholders of the remaining Acquired Funds (''Retail Shareholders'') will receive BKB shares of the corresponding Acquiring Fund. BKB shares will convert to Retail A shares of the respective Acquiring Fund on the first anniversary of the Reorganization, provided that the Board of Galaxy determines that such conversion is in the best interests of the BKB shareholders. Applicants state that the rights and obligations of the shares of the Acquired Funds are substantially similar to those of the corresponding classes of shares of the Acquiring Funds issued in the Reorganization.

8. Shares of the Acquired Funds are offered at net asset value with no front-end sales load or contingent deferred

[1] A registration statement for the Shell Acquiring Funds was filed with the SEC on February 23, 2000, and it is anticipated that it will be declared effective on or about May 8, 2000.

[2] The Acquired Funds and their corresponding Acquiring Funds are: (1) 1784 Tax-Free Money Market Fund and Galaxy Tax-Exempt Fund; (2) 1784 U.S. Treasury Money Market Fund and Galaxy U.S. Treasury Fund; (3) 1784 Institutional U.S. Treasury Money Market Fund and Galaxy Institutional Treasury Money Market Fund (shell); (4) 1784 Prime Money Market Fund and Galaxy Money Market Fund; (5) 1784 Institutional Prime Money Market Fund and Galaxy Institutional Money Market Fund (shell); (6) 1784 Short-Term Income Fund and Galaxy Short-Term Bond Fund; (7) 1784 Income Fund and Galaxy High Quality Bond Fund; (8) 1784 U.S. Government Medium-Term Income Fund and Galaxy Intermediate Government Income Fund; (9) 1784 Tax-Exempt Medium-Term Income Fund and Galaxy Intermediate Tax-Exempt Bond Fund (shell); (10) 1784 Connecticut Tax-Exempt Income Fund and Galaxy Connecticut Intermediate Municipal Bond Fund (shell); (11) 1784 Florida Tax-Exempt Income Fund and Galaxy Florida Municipal Bond Fund (shell); (12) 1784 Massachusetts Tax-Exempt Income Fund and Galaxy Massachusetts Intermediate Municipal Bond Fund (shell); (13) 1784 Rhode Island Tax-Exempt Income Fund and Galaxy Rhode Island Municipal Bond Fund; (14) 1784 Asset Allocation Fund and Galaxy Asset Association Fund; (15) 1784 Growth and Income Fund and Galaxy Growth and Income Fund; (16) 1784 Growth Fund and Galaxy Growth Fund II (shell); and (17) 1784 International Equity Fund and Galaxy International Equity Fund.

[3] Certain of the Acquiring Funds are authorized to issue four additional classes of shares (Retail A, Retail B, Prime A, and Prime B) not involved in the Reorganization.

sales charge (''CDSC''). Trust shares, BKB shares and Shares of the Acquiring Funds are offered at net asset value with no front-end sales load or CDSC. The Non-Money Market Funds of the Acquired Funds are subject to a .25% rule 12b–1 fee. Since 1784's inception, however, no fees have been paid under the rule 12b–1 plan. Two of the Money Market Funds of the Acquired Funds (the 1784 U.S. Treasury Money Market Fund and the 1784 Prime Money Market Fund) are subject to an annual service fee of .10% of average daily net assets. Trust shares, BKB shares and Shares of the Acquiring Funds are not subject to distribution fees under a rule 12b–1 plan. BKB shares and Retail A shares are subject to a maximum .50% shareholder servicing fee.[4] The BKB service fee will be waived, fully or partially, so that no Acquired Fund shareholder will realize an increase in expenses as a result of such fees for as long as they hold BKB shares. No sales load or CDSC will be imposed with respect to the shares of the Acquiring Funds to be issued in the Reorganization. In addition, no sales load will be imposed on conversion of BKB shares to Retail A shares, and no CDSC will be imposed on redemptions of Retail A shares by former Acquired Fund shareholders.

9. The Boards of 1784 and Galaxy, including all of their Disinterested Trustees, found that participation in the Reorganization is in the best interest of each Fund and that the interests of existing shareholders in the Funds will not be diluted as a result of the Reorganization. In approving the Reorganization, the Board of 1784 and the Board of Galaxy considered, among other things: (a) The capabilities, practices, and resources of Fleet and other service providers to the Acquiring Funds; (b) the investment advisory and other fees projected to be paid by the Acquiring Funds, and the projected expense ratios of the Acquiring Funds as compared with those of the Acquiring Funds; (c) the investment objectives, strategies, and limitations of the Acquiring Funds and their compatibility with those of the Acquiring Funds; (d) the shareholder services offered by the Acquiring Funds; (e) the terms and conditions of the Plan of Reorganization; (f) the expected cost savings for certain of the Acquiring Funds; (g) the anticipated tax-Free status of the Reorganization; and (h) the number of investment portfolio options that would be available to shareholders after the Reorganization. In addition, the Board of 1784 considered that the Acquiring Funds' shareholders would benefit from the distribution and shareholder servicing plans of the Acquiring Funds. Further, the Board of 1784 considered that, as a result of the Reorganization, Acquired Fund shareholders should benefit from improved economies of scale and will have access to a larger and more diverse family of mutual funds. Fleet will assume all expenses incurred by the Funds in connection with the Reorganization.

10. The Reorganization is subject to a number of conditions precedent, as set forth in the Plan of Reorganization, including that: (a) a registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the shareholders of the Acquiring Funds, including a majority of the Institutional Shareholders and a majority of the Retail Shareholders, will have approved the Plan of Reorganization independently;[5] (c) each Acquiring Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders; (d) applicants will have received exemptive relief from the SEC with respect to the issues in the application; and (e) the applicants will have received an opinion of counsel concerning the federal income tax aspects of the Reorganization. Applicants agree not to make any material changes to the Reorganization Plan without prior SEC approval.

11. A registration statement on Form N–14 was filed with the SEC on February 7, 2000, and became effective on March 8, 2000. Applicants mailed prospectus/proxy statements to shareholders of the Acquiring Funds on or about March 15, 2000. A special meeting of the Acquired Fund shareholders will be held on or about April 28, 2000.

**Applicants' Legal Analysis**

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by the Fleet Boston Group of more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Funds, each Acquired Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquiring Fund. In addition, because of this ownership, certain of the Funds may be deemed to be under common control, and thus affiliated persons under section 2(a)(3)(C) of the Act.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Boards of Galaxy and 1784, including all of their Disinterested Trustees, found that participation in the Reorganization is in the best interests of each of the Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization.

[4] The Acquiring Funds approved a shareholder services plan with respect to Trust shares, although no agreement has been entered into under the plan

[5] An Acquired Fund will not be reorganized unless both the Institutional Shareholders and Retail Shareholders separately as a class approve the Reorganization.

Applicants also note that the exchange of the Acquired Funds' assets for shares in the Acquiring Funds will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–9180 Filed 4–12–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (BriteSmile Inc., Common Stock, Par Value $.001 per Share) File No. 1–11064

April 6, 2000.

BriteSmile, Inc. (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the security described above (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'').

The Security has been listed and registered on the Amex pursuant to Section 12(b) of the Act.[3] The Company now desires to have its Security trade on the Nasdaq Stock Market, Inc. (''Nasdaq''). Accordingly, the Company has filed a Registration Statement on Form 8–A with the Commission pursuant to Section 12(g) of the Act,[4] and the Company has stated that the Security is scheduled to begin trading on the Nasdaq National Market, and simultaneously be suspended from trading on the Amex, at the opening of business on April 7, 2000. In conjunction with the transfer of trading from the Amex to the Nasdaq, the Company is seeking to withdraw its Security from listing and registration on the Amex in order to avoid both the costs of maintaining dual listings and the potential fragmentation of the market for its Security.

The Company has stated that it has complied with the Rule of the Amex governing the withdrawal of its Security from listing and registration on the Amex and that the Amex, in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's designation for quotation and trading on the Nasdaq National Market. By reason of Section 12(g) of the Act[5] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission required by Section 13 of the Act.[6]

Any interested person may, on or before April 27, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–9182 Filed 4–12–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24380; File No. 812–11848]**

### ING Variable Insurance Trust, et al., Notice of Application

April 6, 2000.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of application for an order of exemption under section 6(c) of the Investment Company Act of 1940 (''1940 Act'') for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to the extent necessary to permit shares of any current or future series of ING Variable Insurance Trust (''Fund'') designed to fund insurance products and shares of any other investment company or series thereof now or in the future registered under the 1940 Act that is designed to fund insurance products and for which ING Mutual Funds Management Co. LLC (''Adviser''), or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund, together with such other investment companies are referred to, collectively, as the ''Funds''), to be sold to and held by: (1) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans; (3) any investment adviser to a Fund and affiliates thereof; and (4) general accounts of any insurance company whose separate account holds, or will hold, shares of a Fund.

*Applicants:* ING Variable Insurance Trust, ING Mutual Funds Management Co. LLC (collectively, ''Applicants'') and certain life insurance companies and variable annuity and life insurance separate accounts.

*Filing Date:* The application was filed on November 5, 1999, and amended and restated on March 29, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 1, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of your interest, the reason for the request, and the issues you contest. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. ING Variable Insurance Trust and ING Mutual Funds Management Co. LLC, 1475 Dunwoody Drive, West Chester, PA 19380.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Attorney or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

#### Applicants's Representations

1. The Fund, an open-end management investment company

[1] 15 U.S.C 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] *Id.*

[6] 15 U.S.C. 78m.

[7] 17 CFR 200.30–2(a)(1).

organized as a Delaware business trust, currently consists of eight separate series, each with its own investment objective and policies. Additional series may be established in the future.

2. ING Funds Distributor, Inc., a registered broker-dealer and member of the National Association of Securities Dealers, Inc., serves as the principal underwriter of the Fund.

3. ING Mutual Funds Management Co. LLC serves as the investment manager of the Funds. ING has retained certain affiliates that act as sub-advisers to the Funds. ING and each of the sub-advisers are indirect wholly-owned subsidiaries of ING Group N.V.

4. The Fund intends to offer shares of its existing and future series to: (a) Separate accounts of insurance companies in order to fund variable annuity contracts and variable life insurance contracts of affiliated and unaffiliated insurance companies, (b) qualified pension and retirement plans, (c) the Adviser of the Fund (or a series thereof) and its affiliates, and (d) general accounts of participating insurance companies. Insurance companies whose separate account(s) owns shares of the Fund are referred to herein as Participating Insurance Companies''. It is anticipated that Participating Insurance Companies will rely on Rules 6e–2 or 6e–3(T) under the 1940 Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

5. Each Participating Insurance company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract issued by such company.

6. Fund shares may be offered directly to plans described in Treasury Regulation § 1.817–(f)(3)(iii) (''Plans'').

7. The Plans may choose the Fund as the sole investment under the Plan or as one of the several investments. Plan participants may or may not be given the right to select the Fund, depending on the Plan itself. Fund shares sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'').

8. Fund shares may also be offered to general accounts whose separate account holds, or will hold, shares of the Fund and to certain related corporations of such life insurance company, pursuant to Treasury Regulation § 1.817–5(3)(i).

9. Fund shares may also be offered to the Adviser and its affiliates, pursuant to Treasury Regulation § 1.817–(f)(3)(ii).

10. Applicants state that the Treasury Department Regulations permit such sales as long as the return on shares held by an insurance company general account or the Adviser and its affiliates is computed in the same manner as for shares held by a separate account, and the general account or the Adviser and its affiliates does not intend to sell shares of the Fund held by it to the public. An additional restriction is imposed by the Regulations on sales to the Adviser and its affiliates, who may hold shares only in connection with the creation or management of the Fund. Applicants anticipate that sales in reliance on these provisions of the Regulations generally will be made to the Adviser and its affiliates and generally for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

**Applicants' Legal Analysis**

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e–2(b)(15) 6e–3(T)(b)(15) thereunder, to the extent necessary to: (a) Permit ''mixed'' and ''shared'' funding as defined below; and (b) allow shares of the Fund to be sold to Plans, Advisers and general accounts as summarized herein.

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (the ''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust Account offers its shares ''exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company * * *.''

4. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

5. Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans, general accounts or Advisers.

6. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where the underlying fund offers its shares ''exclusively to separate accounts of the life insurer, or any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both, or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account * * *.'' Thus, while Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account, it does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts of unaffiliated life insurance companies. Moreover, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans, Advisers or general accounts.

7. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

8. Applicants also state that the current tax law permits the Funds to sell shares to Advisers and general accounts subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(i) and (ii)).

9. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations which made it possible for shares of a Fund to be held by the trustee of a Plan, an Adviser, or general account without adversely affecting the ability of shares of the Fund to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants assert that the sale of shares of a Fund to separate accounts through which variable life insurance contracts are issued and Plans, the Adviser or general accounts could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

10. Applicants assert that if the Fund were to sell shares only to Plans, Advisers and general accounts, or to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans, Advisers or general accounts, or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is requested in the application only because some of the separate accounts that will invest in the Funds may themselves be investment companies that rely on Rules 6e–2 and 6e–3(T) and need to have the relief continue in place.

11. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

12. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it also is unnecessary to apply the restrictions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as a funding medium for variable contracts.

13. Applicants further state that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed or shared funding.

14. Applicants submit that Sections 13(a), 15(a) and 15(b) of the 1940 Act require ''pass through'' voting with respect to management investment company shares held by a separate account to permit the insurance company to disregard the voting instructions of its contracts holders in certain limited circumstances. For example, Applicants state that subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any changes in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

15. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisers, or principal underwriters. Applicants also maintain that the Commission has expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. Applicants state that the Commission deemed such exemptions necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further state that in this respect, flexible premium variable life insurance contracts are identical to schedule premium variable life insurance contracts, and that therefore corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

16. Applicants further represent that the sale of Fund shares to Plans, Advisers, or general accounts should not affect the relief requested. Shares of the Funds sold to Plans would be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the

trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Similarly, Advisers and general accounts are not subject to any pass-through voting requirements. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans, Advisers or general accounts.

17. Applicants note that Section 817(h) of the Code in effect requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' Applicants state that if a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, Applicants state that Section 817(h) provides, in effect, that the diversification test will be applied at the underlying fund level rather than the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *.'' Applicants state that Treasury Regulation 1.817–5, which established diversification requirements for such funds, specifically permits, among other things, investment company managers, insurance company general accounts, ''qualified pension or retirement plans'' and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Advisers, general accounts, Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the insurance company will make distributions in accordance with the terms of the variable contract.

19. Applicants state that there are no conflicts of interest between the contract owners of the separate accounts and the participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one Fund and invest in another. To accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should the interests of contract owners and the interests of Plans conflict, the conflicts can be almost immediately resolved because the trustees of the Plans can, independently, redeem shares out of the Funds.

20. Applicants submit that shared funding by unaffiliated insurance companies does not present any conflict of interest issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants state that if a particular state insurance regulator's decision conflicts with a majority of other insurance regulators, the affected insurer may be required to withdraw its separate account's investment in a Fund. Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

21. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that these differences may produce.

22. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgment as to when an insurance company can disregard contract owners' voting instructions. Potential disagreement is limited by the requirements that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if a particular insurance company's decision to disregard voting instructions represents a minority position or would preclude a majority vote, the insurance company may be required, at a Fund's election, to withdraw its separate account's investment in that fund. No charge or penalty will be imposed as a result of such a withdrawal.

23. Applicants submit that there is no reason why the investment policies of a Fund, or a series thereof, would or should be materially different from what they would or should be if such Fund or series funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Applicants state that each type of insurance product is designed as a long-term investment program, and Applicants represent that each Fund, or series thereof, will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

24. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans, Advisers, and general accounts does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Plan, an Adviser, or an insurer. Regardless of the rights and benefits of participants under the Plans or contract owners, the Plans, Advisers, general accounts and the separate accounts have rights only with respect to their respective shares of the Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder

with respect to distribution of assets or payment of dividends.

25. Applicants assert that with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Plans, Advisers, and general accounts. The transfer agent will inform each Participating Insurance Company of its share ownership in each separate account, as well as inform the trustees of Plans, Advisers and insurers of their holdings. The Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

26. Applicants assert that permitting a Fund to sell its shares to its Adviser(s) or to the general account of a Participating Insurance Company in compliance with Treasury Regulation § 1.817–5 will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Applicants state that unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Fund may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Applicants state that they anticipate that many other Funds may lack an insurance company promoter. Accordingly, Applicants state that such Funds will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

27. Applicants assert that given the condition of Treas. Reg. § 1.817–5(f)(3) and the ''harmony of interest'' between a Fund and its Adviser or a Participating Insurance Company, little incentive for overreaching exists. Applicants also argue that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants represent that permitting investment by Advisers or general accounts will permit the orderly and efficient creation and operation of Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Fund operations.

28. Applicants state that various factors have limited the number of insurance companies that offer variable contracts. These factors include the cost of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. In particular, a number of smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants state that use of the Funds as a common investment medium for variable contracts and Plans would help alleviate these concerns for smaller life insurance companies because participating insurance companies and Plans will benefit not only from the investment and administrative expertise of ING and its affiliates but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding and permitting the purchase of fund shares by Plans may encourage more life insurance companies to offer variable contracts. Applicants submit that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants assert that mixed and shared funding also should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Funds. Applicants assert that this also may benefit variable contract owners by promoting economies of scale, by permitting increased safely through greater diversification, or by making the addition of new portfolios more feasible.

30. Applicants believe that mixed and shared funding and sales of Fund shares to Plans, Advisers, and general accounts will have no adverse federal income tax consequences.

**Applicants' Conditions**

Applicants consent to the following conditions if the application is granted:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of the Fund shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board, (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by rule, or by order upon application.

2. The Fund's Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund and of Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund or series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. In the event that a Plan shareholder should become an owner of 10% or more of the assets of a Fund selling its shares in reliance on the requested exemptive relief, such Plan shareholder will execute a fund participation agreement providing for the conditions of this Application (to the extent applicable) with such Fund. A Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

4. Participating Insurance Companies (on their own behalf as well as by virtue of any investment of general account assets in a Fund), the Adviser and its affiliates, and any Plan that executes a fund participation agreement (collectively ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual

obligation of all insurers investing in a Fund under their agreements governing participation in the Fund, as well as a contractual obligation of any Plan that executes such a participation agreement, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, as appropriate, Plan participants.

5. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium which may include another series of the Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity or life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the Fund, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decisions represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans that have executed participation agreements under their agreements governing participation in the Fund. These responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants, as appropriate.

6. For the purposes of Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict. In no event will the Fund be required to establish a new funding medium for any variable contract. No Participating Insurance Company or Plan shall be required by Condition 5 to establish a new funding medium for any variable contract if a majority of contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer.

7. Participants will be informed promptly in writing of a Board's determination of the existence of a material irreconcilable conflict and its implications.

8. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received from contract owners.

In addition each Participating Insurance Company will vote shares of the Fund, or series thereof, held in its registered separate accounts for which it has not received timely voting instructions as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their registered separate accounts participating in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in a Fund shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

9. The Fund will notify all Participating Insurance Companies and Plans that prospectus or plan document disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts, (b) differences in tax treatment or other considerations may cause, the interest of various contract owners participating in the Fund to conflict, and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by the Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Fund). In particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Advisory and insurance company general account will vote its shares in the same proportion as all contract owners having voting rights with respect to the Fund; provided, however, that the Adviser or insurance company general account shall vote its shares in such other manner as may be required by the Commission or its staff.

14. No less than annually, the Participants shall submit to the Board of a Fund such reports, materials or data as the Board may reasonably request so that such Board may carry out fully the obligations imposed upon it by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Plans to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all Participating Insurance Companies and any Plan that has executed a participation agreement under the agreements governing their participation in the Fund.

15. Any shares of a Fund purchased by the Adviser or its affiliates will be automatically redeemed if and when the Adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither the Adviser nor its affiliates will sell such shares of the Fund to the public.

16. A Participating Insurance Company, or any affiliate, will maintain at its home office, available to the Commission: (a) A list of its officers, directors and employees who participate directly in the management or administration of the Funds or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the Funds and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a separate account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

**Conclusion**

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–9181 Filed 4–12–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24383, 812–11614]**

## Endeavor Series Trust, et al.; Notice of Application

April 10, 2000.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemption from sections 12(d)(1)(A) and (B) of the Act, under section 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

**SUMMARY OF THE APPLICATION:** Applicants request an order that would permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

**APPLICANTS:** Endeavors Series Trust (the ''Trust''), all existing and future series of the Trust, PFL Endeavor Target Account, AUSA Endeavor Target Account (together with the PFL Endeavor Target Account, the ''Accounts''), all existing and future subaccounts (and portfolios thereof) of the Accounts, and any other registered open-end management investment company and its series that are currently or in the future advised by Endeavor Management Co. (the ''Adviser'') or any entity controlling, controlled by, or under common control with the Adviser (collectively, the ''Funds''), and the Adviser.

**FILING DATES:** The application was filed on May 21, 1999, and amended on November 5, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: Trust and Adviser, 2101 East Coast Highway, Suite 300, Corona del Mar, California 92625; Accounts, 4333 Edgewood Road, N.E., Cedar Rapids, Iowa 52499–0001.

**FOR FURTHER INFORMATION CONTACT:** Sara Crovitz, Senior Counsel, at (202) 942–0667, or Michael W. Mundt, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

**Applicants' Representations**

1. The Trust is organized as a Massachusetts business trust and is an open-end management investment company registered under the Act. The shares of the Trust are sold exclusively to insurance company separate accounts that fund variable annuity and variable life contracts. The Trust currently consists of fourteen series, one of which is a money market fund subject to rule 2a–7 under the Act (together with any future Funds that are money market funds, the ''Money Market Funds;'' all other Funds that are not money market funds are collectively referred to as the ''Non-Money Market Funds''). [1] The PFL Endeavor Target Account and AUSA Endeavor Target Account are managed separate accounts established by PFL Life Insurance Company and AUSA Life Insurance Company, respectively, and are each divided into two non-money

[1] All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future registered open-end management investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

market subaccounts with multiple portfolios. The Accounts are open-end management investment companies registered under the Act. The Adviser serves as investment manager to each Fund and is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Advisers selects other affiliated and unaffiliated investment advisers registered under the Advisers Act (''Subadvisers'') to manage the portfolio for each Fund.

2. Applicants state that each Non-Money Market Funds has, or may be expected to have, uninvested cash (''Uninvested Cash'') held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds fro liquidation of investment securities, and new investor capital. The Non-Money Market Funds also may participate in a securities lending program that may be developed in the future under which a Non-Money Market Fund may lend its portfolio securities to registered broker-dealers or other institutional investors (''Securities Lending Program''). Before a Fund participates in a Securities Lending Program, it will select a securities lending agent that is not affiliated with the Adviser, Subadvisers, or any of their affiliates. Any loans would be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans could include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

3. Applicants request an order to permit a Non-Money Market Fund to use its Cash Balances to purchase and redeem shares of a Money Market Fund, and the Money Market Fund to sell shares to and redeem shares as requested by the Non-Money Market Fund. Applicants believe that the ability to invest Cash Balances in Money Market Funds will benefit the Non-Money Market Funds by providing higher rates of return, ready liquidity, and increased diversification.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other acquired investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public 12(d)(1)(J) to permit the Non-Money Market Funds to invest Cash Balances in the Money Market Funds in excess of the limitations in sections 12(d)(1)(A) and (B).

3. Applicants submit that the proposed transactions do not implicate the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that each of the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and will not be susceptible to undue control due to the threat of large scale redemptions. Applicants also submit that there will be no layering of fees because no sales load, redemption fee or assets based distribution fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. To the extent that both a Money Market Funds and Non-Money Market Fund charge a service fee as defined in rule 2830 of the conduct rules of the National Association of Securities Dealers (''NASD Conduct Rules''), the Money Market Fund will waive its service fee with respect to shares purchased by a Non-Money Market Fund or the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the fee incurred by the Non-Money Market Fund. Before approving any advisory contract for a Non-Money Market Fund, the board of trustees or board of managers of a Fund (''Board''), including a majority of the trustees or managers who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Board Members''), will consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser and Subadviser as a result of Uninvested Cash being invested in the Money Market Fund. No Money Fund will acquire shares of any other investment company in excess of the limits in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlled by, or under common control with the investment company. Applicants state that because the Funds share a common investment manager and have substantially identical Boards, each Fund may be deemed to be under common control and affiliated persons of one another. As a result, section 17(a) would prohibit the sale of the shares of a Money Market Fund to a Non-Money Market Fund and the redemption of the shares by the Non-Money Market Funds.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purpose of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Fund will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that Non-Money Market Funds will retain their ability to invest their Cash Balances directly in money market instruments in accordance with their investment objectives and policies. Applicants state that each Money Market Fund may discontinue selling its shares to any of the Non-Money Market Funds if the Board of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from

participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the proposed transactions, and the Adviser and Subadvisers, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to permit a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder and that the transactions will be consistent with the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed as requested by the Non-Money Market Funds will not be subject to a sales load, redemption fee or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act. To the extent that both a Money Market Fund and a Non-Money Market Fund may charge a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), the Money Market Fund will waive its service fee with respect to shares purchased by a Non-Money Market Fund or the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the service fee incurred by the Non-Money Market Fund.

2. Before the next meeting of the Board of a Non-Money Market Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser and Subadviser will provide the Board with specific information regarding the approximate costs to the Adviser and Subadviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Non-Money Market Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for a Non-Money Market Fund, the Board, including a majority of the Independent Board Members, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Funds. The Non-Money Market Fund's minute books will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Non-Money Market Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Non-Money Market Fund's total assets. For purposes of this limitation, each Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions, if any, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectus and statement of additional information.

5. The Non-Money Market Funds, the Money Market Funds, and any future Fund that may rely on the order will be advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser.

6. No Money Market Fund will acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Program, a majority of its Board, including a majority of the Independent Board Members, will approve the Fund's participation in the Securities Lending Program. The Board also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–9252 Filed 4–12–00; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6.500 (6½) percent for the April–June quarter of FY 2000.

**Arnold S. Rosenthal,**

*Acting Deputy Associate Administrator for Financial Assistance.*

[FR Doc. 00–9125 Filed 4–12–00; 8:45 am]

BILLING CODE 8025–01–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–2000–7222]**

### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0017, 2115–0611, 2115–0573, and 2115–0630

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of OMB for the renewal of four Information Collection Requests (ICRs). These ICRs comprise: (1) Regattas and Marine Parades; (2) Boat Owner's Report, Possible Safety Defect; (3) Labeling Requirements in 33 CFR Parts 181 and 183; and (4) International Safety Management Code Audit Reports. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

**DATES:** Comments must reach the Coast Guard on or before June 12, 2000.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG–2000–7222], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for these requests. Comments will become part of this docket and will be available for

inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

**Request for Comments**

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–2000–7222] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

**Information Collection Requests**

1. *Title:* Regattas and Marine Parades.

*OMB Control Number:* 2115–0017.

*Summary:* 46 U.S.C. 1233 authorizes the Coast Guard to issue rules to promote the safety of life on navigable waters during regattas or marine parades. 33 CFR 100.17 and 100.18 promulgate the rules for providing notice of, and additional information for permitting, regattas and marine parades (marine events) to the Coast Guard.

*Need:* The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and determine which measures are necessary to ensure the safety of life during the events. Sponsors must notify the Coast Guard of the event and provide additional information, as required. This is an efficient means for the Coast Guard to learn of the events and to address environmental impacts.

*Respondents:* Sponsors of marine events.

*Frequency:* On occasion.

*Burden:* The estimated burden is 1,540 hours annually.

2. *Title:* Boat Owner's Report, Possible Safety Defect.

*OMB Control Number:* 2115–0611.

*Summary:* Owners of recreational boats or engines who believe their product contains a defect or fails to comply with safety standards can call the Coast Guard Infoline, which will send them a copy of the ''Boat Owner's Report'', or they can file the report on-line at the website for the Office of Boating Safety.

*Need:* 46 U.S.C. 4310(f) gives the Coast Guard the authority to require manufacturers of recreational boats and associated equipment to notify owners and to replace or repair products that are defective or fail to comply with safety standards.

*Respondents:* Owners of recreational boats.

*Frequency:* One time.

*Burden:* The estimated burden is 80 hours annually.

3. *Title:* Labeling Requirements in 33 CFR Parts 181 and 183.

*OMB Control Number:* 2115–0573.

*Summary:* The collection of information requires manufacturers or importers of recreational boats to apply for serial numbers from the Coast Guard and to display various labels on these boats.

*Need:* Under 33 CFR, Parts 181 and 183, manufacturers or importers of recreational boats must obtain, from the Coast Guard, a manufacturer's identification code for each boat and must display various labels on these boats that provide safety information to the boating public.

*Respondents:* Manufacturers and importers of recreational boats.

*Frequency:* One time.

*Burden:* The estimated burden 382,798 hours annually.

4. *Title:* International Safety Management Code Audit Reports.

*OMB Control Number:* 2115–0630.

*Summary:* The Coast Guard uses this information collection to determine the compliance status of U.S. vessels, subject to SOLAS 74, engaged in international trade. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety-management systems.

*Need:* 46 U.S.C. 3203 authorizes the Coast Guard to prescribe rules regarding safety-management systems. 33 CFR Part 96 contains the rules for the safe operation of vessels and of safety-management systems.

*Respondents:* Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.

*Frequency:* On occasion.

*Burden:* The estimated burden is 3,650 hours annually.

Dated: March 29, 2000.

**Daniel F. Sheehan,**

*Director of Information and Technology.*

[FR Doc. 00–9250 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–2000–7206]**

### Voluntary Guidelines on Recreational Activities To Control the Spread of Zebra Mussels and Other Aquatic Nuisance Species

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice; Request for comments.

**SUMMARY:** The Coast Guard seeks comments on voluntary guidelines for persons engaged in water-related recreational activities (e.g., boating and fishing). The Coast Guard must issue voluntary guidelines based on the recommendations prepared by the Aquatic Nuisance Species Task Force to help control the spread of the zebra mussel and other aquatic nuisance species. We request your comments on these voluntary guidelines.

**DATES:** Comments and related material must reach the Docket Management Facility on or before June 12, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered in the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2000–7206), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice or associated guidelines, call Lieutenant Karen Weaver, Project Manager, Office of Operating and Environmental Standards (G–MSO), Coast Guard, telephone, 202–267–2079. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

**How May I Comment on the Voluntary Guidelines?**

You may submit comments and related material on the voluntary guidelines to the Docket Management Facility as indicated previously in the **ADDRESSES** section of this notice. If you submit written comments please include—

- Your name and address;
- The docket number for this notice (USCG–2000–7206);
- The specific section of this notice to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and attachments to the Docket Management Facility, using an address or fax number listed in the **ADDRESSES** section of this notice. Please do not submit the same comment or attachment more than once. If you mail or deliver your comments, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and would like to know if the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period.

**Why Is the Coast Guard Issuing Voluntary Guidelines?**

To comply with the National Invasive Species Act of 1996 (NISA), we are issuing voluntary guidelines for recreational activities to control the spread of zebra mussels and other Aquatic Nuisance Species (ANS). We are providing this opportunity for public comment on the voluntary guidelines. After considering the comments we will issue a final version of the voluntary guidelines. These guidelines will be explained in pamphlets, videos, and other types of outreach media.

The voluntary guidelines in this notice are based on the ones drafted and recommended by the Recreational Activities Committee of the Aquatic Nuisance Species Task Force (the Committee). The guidelines developed by the Committee are available in the docket and may be accessed on the Internet at *http://dms.dot.gov.*

**What are Aquatic Nuisance Species (ANS)?**

ANS are organisms introduced into non-native habitats and are often freed from the natural predators, parasites, pathogens, and competitors that have kept them in check. Once established, these organisms can displace native species; they can impede municipal, industrial, and private water-intake systems; and they can degrade aquatic ecosystems.

The introduction of most ANS is the work of humans. In some cases this is intentional, but in many it is accidental. In addition to overland transport of boats, which has long been identified as a key dispersal pathway, there are many others. The other human activities that can disperse ANS include angling, scuba diving, and waterfowl hunting.

Establishing these voluntary guidelines will help to promote good habits that will control the spread of ANS. Surveys have shown that participants in recreational activities will take necessary precautions if they know what to do. Conversely, they will not take precautions unless they know what to do.

**What Is the Purpose of the Voluntary Guidelines?**

The voluntary guidelines will give the public clear, concise information on how to avoid the transport of ANS. These voluntary guidelines provide specific procedures that individuals engaged in the corresponding recreational activity can follow so they will not accidentally transport ANS.

**What Activities Do the Voluntary Guidelines Address and What Are the Recommended Procedures?**

These voluntary guidelines address the following water-related recreational activities: Scuba diving; waterfowl hunting; harvesting of bait by recreational anglers; angling; boating; operating seaplanes; and operating personal watercraft. These voluntary guidelines are intended to assist natural-resource managers and others involved in educating individuals who participate in these recreational activities about the problems associated with the spread of ANS in the United States.

**Voluntary Guidelines for Recreational Activities To Control the Spread of Zebra Mussels and Other Aquatic Nuisance Species**

*Generic Guidelines*

Some guidelines are appropriate for any recreational activity associated with water. The generic preventive guidelines listed below apply to most recreational activities occurring in marine and inland waters. In addition to these guidelines, States and provinces may include specific laws and guidelines for their areas.

Always do the following:

- Always inspect equipment (in the broadest sense, *e.g.*, boats, planes, trailers, decoy anchors, SCUBA gear, and lures) for visible plants and animals before transporting.
- Always remove visible plants and animals from equipment (expel plants, animals, and water from internal parts).
- Always drain water from equipment before transporting.
- Always clean equipment that has been in infested waters before placing it in other waters (see the ''Pathway-specific guidelines'' section for specific methods).
- Always report questionable species to your resource agency for identification. Information is available from many sources about identification of ANS; however, specimens are needed to confirm sightings. Many jurisdictions have different rules regarding possession and transport. Always ask your local natural resources management agency for instructions.

Never do the following:

- Never transport plants, animals, mud, or water from lakes, rivers, wetlands, and coastal waters.
- Never release animals or plants (*e.g.,* aquarium species, bait, pets, hunting dogs, or water garden plants) into the wild unless you release them into the same waterbody or location where the species came from.

*Pathway-Specific Guidelines*

These guidelines cover recreational activities that are potential pathways for transferring ANS. Individuals engaged in these activities should follow these guidelines to help prevent the spread of ANS. You should note that States and provinces may add to these voluntary guidelines their own related laws and guidelines, if any, regarding transport or possession of ANS.

(a) Scuba Diving

You can unintentionally transport ANS, such as the zebra mussel, spiny water flea, and Eurasian water milfoil, from one body of water to another on

your scuba-diving gear. You should take precautions to reduce the risk of spreading these unwanted species, especially when diving in different waters on the same or consecutive days.

Many scuba divers believe that zebra mussels have benefited the sport by improving visibility in the waters they inhabit. They soon learn, however, that geological formations and shipwrecks that once attracted them are encrusted with layers of zebra mussels, which obscure these objects. The harm to the environment, the fisheries, and industrial, municipal, and private water intakes, therefore, far outweigh any benefit.

Any objects removed from the water have the potential of introducing ANS to new waters. By adhering to the guidelines that follow, you can help prevent the spread of ANS when you scuba dive, and you can help protect the environment from the harmful impacts of these species.

Guidelines

- Inspect your equipment.
- Remove any plants, mud, or animals that are visible before leaving all waters.
- Drain water from buoyancy compensator (bc), regulator, tank boot, and any other equipment that may hold water before leaving all waters.
- ANS can survive for a period of time on wet scuba gear or in water. Therefore, do at least one of the following:

(1) Dry your suit and all equipment completely before diving in different waters, and rinse the inside of your bc with hot or salted water as described in items (2) and (3), which immediately follow.

(2) Submerge and wash your suit and equipment, and rinse the inside of your bc with hot water (at least 40° (C or 104° (F).

(3) Submerge and wash your suit and equipment in a tub or tote containing salted water (½cup of salt dissolved in one gallon of water); rinse the inside of your bc with the salted solution; and rinse your equipment with clean water.

(b) Waterfowl Hunting

Nonindigenous ANS such as the zebra mussel, purple loosestrife, and Eurasian water milfoil can damage habitat for fish, waterfowl, and other wildlife. Waterfowl hunters should be aware that it is possible to inadvertently spread ANS from one lake or wetland via boats, motors, trailers, and decoys. Waterfowlers should assume that any fragments of aquatic plants could be potentially harmful and should not be transported from one wetland, lake, river, or coastal area to another. In addition, zebra mussels and their microscopic larvae can attach to aquatic plants. If fragments of these plants are transported, they can inadvertently transport zebra mussels to other waters. By following the guidelines on recreational activities, you can help prevent the spread of ANS via waterfowl hunting.

Guidelines

Before the hunting season—

- Switch to elliptical, bulb-shaped, or strap anchors on decoys, which avoid collecting submerged and floating aquatic plants; or
- If boats are moored in waters infested with zebra mussels, use the following tips to remove or kill zebra mussels or other aquatic animals and plants that might be in or on your boat:

(1) Remove any visible zebra mussels from the boat and wash and rinse the boat with hot water; or

(2) Spray the boat with high-pressure water; or

(3) Dry all parts of the boat for at least 5 days before placing it into another waterbody.

After hunting—

- Inspect waders or hip boots; remove aquatic plants; and, where possible, rinse mud from them before leaving the waters;
- Remove aquatic plants, animals, and mud that are attached to decoy lines or anchors; and
- Drain the water from boats before transporting to other waters.

Between hunting trips—

- Inspect equipment for any aquatic plants, animals, and mud not removed after hunting; remove and dispose of them on land away from the waters; and
- Follow the guidelines for boaters in paragraph (e).

(c) Recreational Anglers' Harvest of Live Bait (Non-Commercial Harvest)

The guidelines that follow apply to the non-commercial harvesting of live bait by recreational anglers. Also, the RAC is developing guidelines for commercial bait.

Nonindigenous species can lodge in nets and other equipment used to harvest baitfish and can be unintentionally transported into noninfested waters. Some species can survive up to 2 weeks out of water and remain viable when dislodged into another waterbody. Non-target ANS species like ruffe and round goby, as well as fragments of aquatic nuisance plants, such as hydrilla or Eurasian water milfoil, can be harvested along with target baitfish species. If such species are transferred to noninfested waters, they can have harmful effects on native fish populations. To help prevent the transfer of these species, you should conduct the procedures that follow during or after the harvest of live bait for personal use.

Guidelines

- Inspect harvested live bait for non-target species, and remove them where harvested.
- Always dispose of unwanted live bait on land (away from contact with waters) before leaving the waters. Never release live bait into a waterbody or move aquatic plants or animals from one waterbody into a different waterbody.
- Remove all aquatic plants from boats, trailers, nets, or other equipment while on shore before leaving the water-body access.
- Before reusing nets, roll out, hand clean, and dry them.
- Drain water from boats and equipment (bilge pump, tubs, live wells, etc.) before leaving any waterbody access.
- Never use water from infested waters to transport live bait to other waters. In many States and provinces, live bait harvested from designated infested waters is illegal. Check with your local State natural resource agency before you collect live bait.
- In areas where harvest of bait from infested waters is legal, avoid using the same equipment in infested and noninfested waters. Some aquatic nuisance species once removed from infested waters can survive up to two weeks in a moist environment. By drying surfaces where they can be lodged or attached, you can substantially reduce the risk of transporting them in boats and equipment.
- Rinse all equipment, including boats and trailers, with tap water and dry them for as long as possible, but for at least 5 days before re-use, especially in other waters. Before re-use, you should roll out nets, hand clean them, and dry them for a minimum of 10 days, or freeze them for 2 days.
- The following applies to disinfection, specific to zebra mussels, of equipment that is difficult to treat with drying and washing methods (use these methods away from the waterbody):

(1) As an added equipment treatment, a dip of 100 percent vinegar for 20 minutes can kill small zebra mussels and may be effective against other ANS.

(2) Treatment with other chemicals such as a 1-percent solution of table salt for 24 hours can be as effective as a dip of vinegar.

The recipes provided in the following table are for a 1-percent solution of table salt (sodium chloride) treatment in water.[1]

| Gallons of 2ater | Cups of salt* |
|---|---|
| 5 | ⅔ |
| 10 | 1¼ |
| 25 | 3 |
| 50 | 6¼ |
| 100 | 12⅔ |

*Based on 312 g per cup.

(d) Angling

The introduction of ANS can cause significant changes in freshwater and marine ecosystems. Populations of prey and game fish can be significantly harmed by the presence of species such as the sea lamprey, Asian swamp eel, Chinese carp, and zebra mussel. Some aquatic nuisance plants (*e.g.,* hydrilla, Eurasian water milfoil, and water hyacinth) may limit the viable fishing area of inland waters. You can help prevent the transfer of ANS by following the guidelines in this section whenever you engage in angling.

Guidelines

- Dispose of unwanted live bait on land before leaving the waterbody. Never release live bait into a waterbody or move aquatic plants or animals from one waterbody to another.
- Wash and dry your boat, tackle, downriggers, float tube, waders, and other equipment to remove or kill harmful species that were not visible at the boat launch.
- Inspect all fish caught using seines, dipnets, or other types of netting; remove and properly discard all non-target species.

(e) Boating

ANS, such as the zebra mussel, spiny water flea, and Eurasian water milfoil, can be unintentionally transported through water-related recreation activities because some ANS can survive many days out of water. If you are a water recreationalist (*e.g.,* boater, angler, water-skier, canoeist, or kayaker), there are some important actions you can take to prevent the transport of ANS from one waterbody to another.

Guidelines

- Before leaving all waters, inspect your boat (sailboats check centerboard and bilgeboard wells, and keel boats check the rudder-post area), trailer (check axles, runners, lights, and rollers), and other boating equipment (check anchors, water-skis, or other tow lines), and remove any plants, animals, or mud that are visible (see diagram 1).
- Drain water from the motor, livewell, bilge, and transom wells while on land and before leaving all waters.
- Wash and dry your boat, tackle, downriggers, trailer, and other boating equipment to kill harmful species that were not visible at the boat launch. You can do this on your way home or once you arrive home.
- Before you transport to other waters, do one of the following:

(1) Rinse your boat and boating equipment with hot (greater than 40 °C or 104 °F) tap water.

(2) Spray your boat and trailer with high-pressure water.

(3) Dry your boat and equipment for at least 5 days.

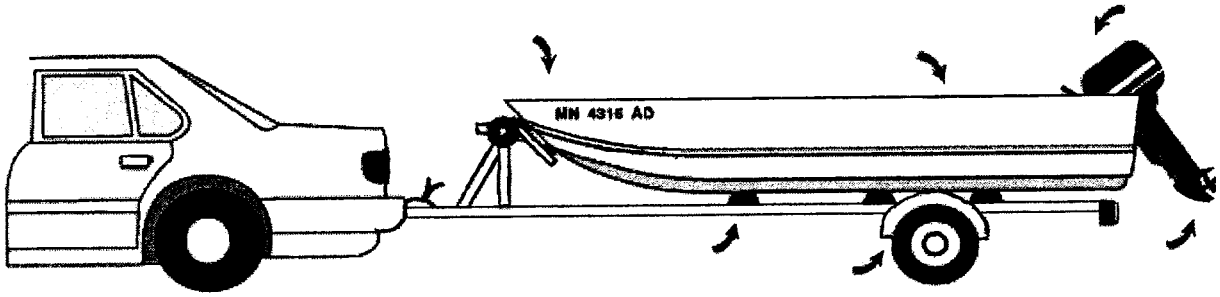


Diagram (1)

For your information, the U.S. Fish and Wildlife Service, in conjunction with Canadian officials and other partners, are implementing the 100th Meridian Initiative, which focuses on preventing the westward spread of zebra mussels and other ANS by boat inspections and by dissemination of posters, brochures, and other information about ANS. There are many other State and Federal initiatives focusing on controlling the spread of ANS. Consult your local Fish and Wildlife Service facility or other appropriate State or Federal natural resource management agency for additional information.

**(f) Seaplanes**

Many ANS, such as the zebra mussel and Eurasian water milfoil, can be unintentionally transported from one waterbody to another on the floats of seaplanes. Therefore, it is important to clean the aircraft to remove ANS before traveling, rather than after landing at new locations. In addition, it is important for you to incorporate the procedures listed here into the operation of your seaplane. However, plane safety is the first priority when considering and following these guidelines.

Guidelines:

Before entering the aircraft—

- Inspect and remove aquatic plants from the floats, wires or cables, and water rudders;
- Pump floats, which may contain infested water; and
- If moored in waters infested by zebra mussels for extended periods, check the transom, chine, bottom, wheel wells, and step area of floats (see diagram 2). If zebra mussels are present on the floats, you can use (any) one of the following methods to remove or kill them:

(1) Wash the floats with hot water.

(2) Spray the floats with high-pressure water.

(3) Dry all parts of the floats for at least 5 days.

Before takeoff—

[1] Adapted from ''Fisheries Scientist's Pocket Reference'' booklet by Iowa Chapter of the American Fisheries Society, 1991, by Doug Jensen, University of Minnesota Sea Grant Program.

• Avoid taxiing through heavy surface growths of aquatic plants before takeoff;

• Raise and lower water rudders several times to clear off plants. This will also minimize cable stretch and improve the effectiveness of the rudders for steering.

After takeoff—

• Raise and lower water rudders several times to free fragments of aquatic plants while over the waters you are leaving or while over land; and

• If aquatic plants remain visible on floats or water rudders, return to the lake and remove the plants.

Storage or mooring—

• Remove aircraft from the water, as is often done at seaplane bases, and allow all parts of the floats to dry. A few days of hot, summer temperatures will kill adult zebra mussels (longer drying times of up to 10 days are required to kill adult mussels during cool, humid weather); and

• Aircraft moored for extended periods in zebra-mussel-infested waters may have zebra mussels attached to the floats and should be cleaned regularly. In remote locations, where zebra mussels are present, but where there are no provisions for drying, spraying, or treating the floats with hot water, the best option available for preventing the spread of the mussels is to hand-clean the submerged portions of floats with a scrub brush and to physically remove adult mussels. (Aircraft moored for extended periods in zebra-mussel-infested waters may have zebra mussels attached to the floats and should be cleaned regularly.)

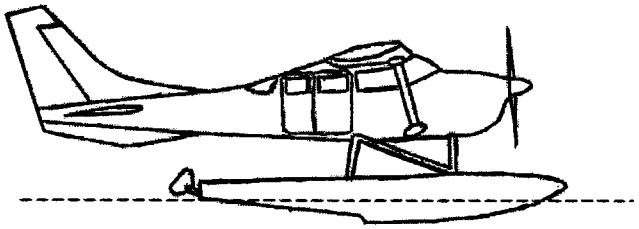

Diagram (2)

(g) Personal Watercraft

Personal watercraft that have jet-drive systems require some extra precautions to avoid ANS. A pump pulls water in through an opening under the craft, and the impeller (an internal propeller) forces water out, moving the craft forward. ANS can easily get lodged in the jet-drive system and get transported if the watercraft is taken from one waterbody to another. A small piece of Eurasian water milfoil, or other ANS, caught in the impellers can infest a new lake or river. Zebra mussels can survive in excess water in the jet drive and spread to other waters. By applying the following guidelines, you can help prevent the transfer of ANS via your personal watercraft.

Guidelines:

In the water—

• Avoid running the engine through aquatic plants near the boat access; and

• Push or winch the watercraft up on the trailer without running the engine.

On the trailer—

• After you pull the watercraft from the water, start the engine for 5 to 10 seconds to blow out any excess water and vegetation. (The dark, damp, enclosed area of the impeller provides an ideal environment for aquatic nuisance plants to survive.); and

• After the engine stops, pull plants out of the steering nozzle. Inspect your trailer and any other sporting equipment for fragments of aquatic plants, and remove them before you leave the access area.

After trailering and before re-use—

• Wash and dry your watercraft and equipment to kill or remove harmful species that you did not see at the boat launch. You can do this on your way home or once you arrive home. Choose one of the following methods of disinfection before transporting to another waterbody:

(1) Rinse your watercraft and other equipment with hot (greater than 40 °C or 104 °F) tap water.

(2) Spray your watercraft and trailer with high-pressure water.

(3) Dry your watercraft and equipment for at least 5 days.

Dated: April 7, 2000.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00–9248 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–2000–7201]**

### Commercial Fishing Industry Vessel Advisory Committee (CFIVAC); Vacancies

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). CFIVAC advises the Coast Guard on safety in the commercial fishing industry.

**DATES:** Application forms should reach us on or before June 1, 2000.

**ADDRESSES:** You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, Room 1116, 2100 Second Street SW., Washington, DC 20593–0001, by calling 202–267–2978; or by faxing 202–267–0506. Send your application in written form to the above street address. This notice is available on the internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Jennifer Williams, Assistant Executive Director of CFIVAC, or Ensign Chris O'Neal, telephone (202) 267–2008, fax (202) 267–0506.

**SUPPLEMENTARY INFORMATION:** The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Assistant Commandant for Marine Safety and Environmental Protection, on the safe operation of U.S.-flag commercial fishing vessels. This advice assists us in formulating regulations and programs designed to improve safety on commercial fishing vessels.

CFIVAC meets at least once a year in different seaport cities nationwide. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

We will consider applications for six positions that expire or become vacant in October 2000 in the following categories: (a) Commercial Fishing Industry (four positions); (b) General Public (one position); (c) Surveyor/ Naval Architect (one position). To be eligible, you should have experience in the operation of commercial fishing vessels, maritime safety, safety education, or marine surveying/naval architecture. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, however members will be reimbursed for travel expenses.

In support of the U.S. Department of Transportation's policy on ethnic and gender diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: April 3, 2000.

**Rear Admiral Robert C. North,**

*Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–9249 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–15–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–1998–4379]**

### Delegation of Authority

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

**ACTION:** Notice of delegation of authority.

**SUMMARY:** The FAA is giving notice of a specific delegation of authority from the FAA Administrator to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition (hereinafter the ''ODRA Director''), to supplement and expand the authority conveyed under Title 14 CFR part 17 and the Administrator's delegation of July 29, 1998, in order to permit the ODRA Director to issue final FAA Agency orders on behalf of the Administrator in certain bid protests and contract disputes filed with the FAA Office of Dispute Resolution for Acquisition. The delegation was set forth in a memorandum signed by the Administrator dated March 27, 2000. The FAA is publishing the text of the delegation, so that it is available to interested parties.

**FOR FURTHER INFORMATION CONTACT:** Marie A. Collins, Staff Attorney and Dispute Officer for the Office of Dispute Resolution for Acquisition (ACG–70), Federal Aviation Administration, 400 Seventh Street, SW, Room 8332, Washington, DC 20590; telephone (202) 366–6400; facsimile (202) 366–7400.

**SUPPLEMENTARY INFORMATION:** Under the Department of Transportation and Related Agencies Appropriations Act of 1996, Public Law 104–50, 109 Stat. 436 (1995) (''Appropriations Act''), Congress directed the FAA to develop an acquisition system that addresses the mission and unique needs of the Agency and at a minimum, provides for more timely and cost-effective acquisition of equipment and materials. In the Appropriations Act, Congress expressly directed the FAA to create the new acquisition system without reference to existing procurement statutes and regulations. The result was the development of the FAA's Acquisition Management System (AMS) and the establishment of the Office of Dispute Resolution for Acquisition (ODRA), which is independent of the FAA's procurement offices and counsel. The ODRA serves as the forum for administrative resolution and adjudication of bid protests and contract disputes arising from AMS acquisitions and contracts. The ODRA's mandate is to resolve such bid protests and contract disputes in a timely and efficient manner, while emphasizing the use of alternative dispute resolution techniques to the maximum extent practicable. A final procedural rule that took effect on June 28, 1999 for ODRA bid protests and contract disputes was published in the **Federal Register** on June 18, 1999 (64 FR 34926). Technical corrections to the rule were published in the **Federal Register** on August 31, 1999 (64 FR 47361).

The full text of the March 27, 2000 delegation from the Administrator to the ODRA Director provides the ODRA Director with additional authority to act on behalf of the Administrator with respect to ODRA bid protests and contract disputes as follows: In order to render more efficient the FAA acquisition dispute resolution process, pursuant to 49 U.S.C. 106(f)(2), 49 U.S.C. 46101, *et seq.,* Public Law 104–50 and 14 CFR Part 17, I hereby delegate to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition (ODRA) authority to execute and issue on behalf of the Administrator, orders and final decisions for the FAA in all matters within the ODRA's jurisdiction, provided that such matters involve either: (1) A bid protest concerning an acquisition having a value or potential value of not more than one million dollars ($1,000,000.00); or (2) a contract dispute involving a total amount in dispute, exclusive of interest, legal fees or costs, of not more than one million dollars ($1,000,000.00). The Associate Chief Counsel/ODRA Director further is authorized to execute and issue orders and final decisions on behalf of the Administrator for any applications made pursuant to the Equal Access to Justice Act for matters within the ODRA's jurisdiction.

The foregoing authority may not be re-delegated.

This delegation supplements and expands the authority previously delegated by me on July 29, 1998. This delegation does not preclude the Associate Chief Counsel/Director of the ODRA from requesting, in any matter before the ODRA, that the order setting forth the final decision of the FAA be executed by the Administrator.

Issued in Washington, DC, on March 27, 2000.

**James Whitlow,**

*Acting Chief Counsel.*

[FR Doc. 00–9146 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Policy Statement Number ANM–99–2]**

### Guidance for FAA Review of Certification Plans To Address Human Factors for Certification of Transport Airplane Flight Decks

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

**ACTION:** Disposition of comments on notice of policy statement.

**SUMMARY:** In this document, the FAA addresses public comments that were submitted in response to a previously published general statement of policy that is applicable to the type certification process of transport category airplanes. The policy provides guidance to FAA Certification Teams that will enable them to conduct an effective review of an applicant's Human Factors Certification Plan or the human factors components of a general Certification Plan, when one is submitted as part of a type certification (TC), supplemental type certification (STC), or amended type certificate (ATC) project. This notice is to advise the public of the FAA's response to the comments that were submitted.

**FOR FURTHER INFORMATION CONTACT:** Sharon Hecht, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane & Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2398; facsimile (425) 227–1100; e-mail: sharon.hecht@faa.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 6, 1999, the FAA published in the **Federal Register** (64 FR 54399) a general statement of policy comprising guidance to FAA personnel for reviewing certain certification plans for transport category airplanes. Specifically, the policy statement provided internal guidance to FAA Certification Teams that will enable them to conduct an effective review of an applicant's Human Factors Certification Plan (or the human factors components of a general Certification Plan), when one is submitted at the beginning of a type certification (TC), supplemental type certification (STC), or amended type certificate (ATC) project. The guidance described the sections of a typical Human Factors Certification Plan and the information that would be appropriate for inclusion in each section. The purpose of a Human Factors Certification Plan is to facilitate the establishment early on of an effective working relationship and agreement between the FAA and the applicant about the means by which human factors issues will be addressed during a certification project.

Although the policy was intended for internal use by FAA Certification Teams, the FAA published it in the **Federal Register** to notify the public about it, and invited comments from the public on the policy. The FAA has given due consideration to the comments received, and this notice provides the FAA's disposition of those comments.

## Disposition of Comments

The FAA received comments on the policy statement submitted by six commenters, representing aviation industry groups and manufacturers.

Two commenters support the intent of the policy.

Several of the commenters suggest certain editorial changes (*i.e.,* word choices, formatting, and additional references) to improve the clarity and readability of the policy. The FAA may consider these suggested changes if the policy statement is updated and republished in the future.

The remainder of the comments generally fall within three specific subject areas. These are addressed below.

### *1. Status and Effect of the General Statement of Policy*

Many of the comments concerned the nature of policy statements overall and the policy process in particular. The commenters question the ''effect'' of the policy, and whether the policy is ''proposed'' or ''final.'' One commenter is not clear if the policy statement ''has reached the stage of being official FAA policy.'' One commenter refers to the policy as ''interim,'' while another considers it to be ''proposed.''

Another commenter is concerned that the policy, while not creating any new rules, implies new requirements or practices. This commenter notes that the policy statement contained several examples where the discussion moved into methods and processes for compliance that would be ''more appropriate as guidance material.'' This commenter also is concerned about updating the policy statement's appendices on a continuing basis (as was indicated in the notice). The commenter contends that the practice of updating material of this kind without prior public review ''appears to be outside the current practices of generation of advisory and rulemaking material.''

As evidenced from these comments, the FAA acknowledges that there clearly is some confusion regarding the effect, intent, and meaning of published general statements of policy. In an effort to clarify this issue, the FAA offers the following explanation:

In a commitment to bring more transparency to government, Federal agencies have begun to publish in the **Federal Register** general statements of policy concerning internal processes and procedures. By doing this, agencies are providing the public with access to information that previously would have been released only as internal agency memos and directives.

A general statement of policy may be issued for different purposes, including:

- To advise the public of the manner in which the agency will exercise a discretionary power in subsequent adjudications or through rulemaking; or
- To provide guidance to agency officials in exercising their discretionary powers (and, at the same time, notify the public of this guidance).

A general statement of policy may be issued to different audiences: Often policy statements address agency personnel, and sometimes they address the public.

A general statement of policy is ''non-binding.'' This means that it does not constitute a new regulation and the agency cannot apply or rely upon it as law. Because they are non-binding, general statements of policy preserve the flexibility of the affected agency personnel and their opportunity to make individualized determinations.

When a general statement of policy only announces what the agency has established as a policy, and/or merely provides guidance to agency officials in exercising their discretionary powers, a public notice-and-comment procedure is not required under the Administrative Procedure Act. Unless the issuing agency specifically states that the policy is ''proposed'' and requests comments from the public to help in developing the final policy, a general statement of policy may be considered effective when it is published in the **Federal Register** (and it may have been in effect within the agency even before publication).

In the case of the general statement of policy that is the subject of this notice, the FAA issued it as internal guidance to FAA Certification Teams. As indicated in the published policy statement, this guidance was necessary because increasing numbers of applicants have asked for assistance from the FAA in developing Human Factors Certification Plans. Given this trend, the Transport Airplane Directorate developed this guidance to assist FAA Certification Team members in working with applicants who are attempting to develop Human Factors Certification Plans, as well as in reviewing these plans after they have been submitted. The guidance provided is based on current regulations and practices; it does not add any new requirements.

Although the policy was directed toward FAA personnel, the FAA considered that it also would be of use to applicants: If applicants were to develop a Certification Plan, they could use the information in the policy statement as a basis for communicating their approach to addressing the human factors aspects of their project.

Although this policy is new, and may change as issues, technology, and regulations evolve, the FAA considers it to be currently in effect. FAA personnel have the discretion of applying the policy's guidelines, or not applying them when inappropriate.

*2. The Current Need for the Policy*

Some commenters state that the policy is premature and should not be issued at this time for use in type certification programs. These commenters state that there is no current official requirement for a Human Factors Certification Plan, and the policy will only lead to confusion for applicants, aircraft manufacturers, and regulatory authorities. Several commenters suggest that the policy will require significant interpretation by the FAA Certification Teams and personnel at FAA Aircraft Certification Offices (ACO). These commenters also state that human factors issues in flight deck design are complex and there are other on-going efforts (discussed below) in place that will better address them on an international scale. These commenters suggest that the FAA reconsider the need for this policy at this time.

The FAA does not concur with these commenters' suggestion that the policy is not needed. The FAA has placed great emphasis not only on the importance of human factors in design and certification, but on the need to define and understand how to apply human factors practices to our existing processes. The intent of the published general statement of policy was to address that need.

While it is true that there is no regulatory requirement for a ''Human Factors Certification Plan'' (or for a certification plan of any kind, for that matter), already many applicants for certification projects have developed such plans to communicate their approach to the identification and resolution of human factors issues. This type of plan is proving to be an effective means by which to establish an early and formal written agreement between the applicant and FAA on the certification basis, the methods of compliance, and the schedules for completing the certification project. This approach has helped FAA Certification Teams address issues early in the certification process, thereby decreasing the applicant's certification risk in cost or schedule.

As stated previously, the number of applicants asking for assistance from the FAA in developing and/or reviewing Human Factors Certification Plans has increased in recent years. In light of this, the FAA has seen a clear need to provide guidance at this time to FAA Certification personnel to assist them in helping these applicants develop plans, as well as in reviewing the plans that are submitted. The FAA considers that this formal internal policy is necessary to ensure standardization of internal procedures and consistent application of human factors in the certification process.

Accordingly, the FAA regards the guidance as necessary, and does not consider it premature.

*3. The Task of the Human Factors Harmonization Working Group*

Several of the commenters express concern that the development of guidance, such as that provided in the policy statement, should have been left to the Human Factors Harmonization Working Group (HFHWG). That Working Group was established (64 FR 39553, July 22, 1999) under the aegis of the FAA-sponsored Aviation Rulemaking Advisory Committee (ARAC), and its members represent human factors experts from the aviation community and government authorities. The FAA tasked ARAC to provide advice and recommendations as to the need for regulations and/or advisory material to address flight crew error and flight crew performance considerations in the flight deck certification process. Subsequently, ARAC asked the HFHWG to address this task.

One commenter states that by issuing the policy statement, the FAA appears ''to be attempting to bypass the purpose of the HFHWG or to potentially compromise that Group's efforts.'' Several of the commenters state that the FAA should not issue the policy as official policy/guidance until the HFHWG activities are complete. One commenter states that existing regulations, advisory material, and manufacturers' human factors certification policies adequately cover the interim period pending completion of the HFHWG's activities. These commenters assert there should not be separate FAA and HFHWG activity on human factors issues, since it will likely lead to controversies, inconsistent application of guidance/policy, and dilution of the work of the HFHWG.

For several reasons, the FAA does not concur with the commenters' assertions that the HFHWG is the appropriate entity for issuing guidance such as that contained in the policy statement.

First, the described policy relates to an internal FAA process. Such processes are developed independent of ARAC activities, and the role of ARAC groups does not include defining how the FAA operates internally.

Second, the HFHWG was tasked with activities that are different from and beyond the guidance provided by the policy statement. The HFHWG is to review relevant existing regulations and advisory material, and make recommendations about what regulatory standards and/or advisory material should be updated or developed to consistently address (1) design-related flight crew performance vulnerabilities, and (2) prevention and management of flight crew error. In contrast, the policy statement describes methods for considering applicants' proposals for compliance with existing requirements. The possible products of the HFHWG activity may or may not include the information and material that is provided in the policy statement. It is doubtful that the HFHWG will be focusing much attention on the substance of the guidance contained in the policy statement.

Third, the activities of the HFHWG are not scheduled to be completed until approximately July 2002. As discussed previously, the FAA saw a need for issuing the guidance as soon as practicable to serve as an aid to FAA personnel in new certification projects.

For these reasons, the FAA does not agree that the issuance of the policy statement in any way circumvents the on-going work of the HFHWG. In the long term, both the policy statement and the product(s) of the HFHWG will serve as important initial steps in facilitating the institutionalization of formal procedures that systematically incorporate human factors considerations into all aspects of airplane design and certification.

**Conclusion**

After due consideration of the public comments submitted, the FAA finds no reason to amend or otherwise modify the general statement of policy as previously published.

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

**Vi L. Lipski,**

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

[FR Doc. 00–9214 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Randolph County, NC

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

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Randolph County, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601. Telephone: (919) 856–4350.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) addressing proposed improvements to the existing United States Route (US) 64 corridor in the area of the City of Asheboro in Randolph County. As part of this action, the NCDOT also proposes to improve the access to the North Carolina Zoological Park (NC Zoo). The proposed improvements would involve the construction of a four-lane, median-divided, controlled-access highway on new location south of existing US 64 from around SR 1326 (Stutts Road) west of Asheboro to around SR 2713 (Trogdon Hill Road) east of Asheboro. A controlled-access facility on new location also is proposed west of NC 159 to improve access to the NC Zoo.

The purposes of the proposed action include: (1) Improving traffic flow and levels of service on the section of US 64 in the project study area; (2) Relieving congestion on US 64 in the City of Asheboro, thereby improving safety and reducing the number of accidents; (3) Improving access to the NC Zoological Park; and (4) Improving high-speed regional travel along the US 64 intrastate corridor.

Alternatives under consideration include: (1) No-Build Alternative; (2) Transportation Systems Management (TSM) Measures; (3) Mass Transit Alternative; (4) Improving the existing facility; and (5) Constructing a facility on new location south of existing US 64.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. Public information meetings, meetings with local officials, and a public hearing will be held. Information on the time and place of the public information meetings, and public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: April 4, 2000.

**Roy C. Shelton,**

*Operations Engineer, Federal Highway Administration, Raleigh, North Carolina.*

[FR Doc. 00–9227 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Union and Mecklenburg Counties, North Carolina

**AGENCY:** Federal Highway Administration.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Union and Mecklenburg Counties, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601. Telephone: (919) 856–4350.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) addressing proposed improvements to the US 74 corridor between US 601, in Union County and I–485, in Mecklenburg County. The proposed action would involve the construction of a multi-lane divided, controlled access highway connecting US 601 to I–485. The proposed facility is the final link of the US 74 Intrastate Corridor identified for improvement and would extend freeway travel from eastern Union County, through Mecklenburg and Gaston Counties, to eastern Cleveland County. The proposed facility would address existing and anticipated future traffic congestion in the area as well as improve driver safety through increased capacity and control of access. The proposed action is consistent with the thoroughfare plans approved by the Monroe and Mecklenburg-Union Metropolitan Planning Organizations.

Alternatives under consideration include: (1) No-Build; (2) Transportation Systems Management (TSM); (3) Mass Transit; (4) Improve Existing US 74; and (5) Construction of a facility on new location.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. Public information meetings, meetings with local officials, and a public hearing will be held. Information on the time and place of the public information meetings, and public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding the intergovernmental consultation on Federal programs and activities apply to this program).

Dated: April 4, 2000.

**Roy C. Shelton,**

*Operations Engineer, Federal Highway Administration, Raleigh, North Carolina.*

[FR Doc. 00–9228 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

### Agency Information Collection; Activity Under OMB Review; Passenger Origin Destination Survey Report

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of

Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of BTS collecting a sample of airline passenger itineraries with dollar value of the passenger ticket from large scheduled airlines. Comments are requested concerning whether (a) the collections is still needed by DOT; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted by June 12, 2000.

**ADDRESSES:** Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**COMMENTS:** Comments should identify the OMB #2139–0001 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2139–0001. The postcard will be date/time stamped and returned to the commenter.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

**SUPPLEMENTARY INFORMATION:**

**OMB Approval No. 2139–0001**

*Title:* Passenger Origin Destination Survey Report.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers.

*Number of Respondents:* 37.

*Estimated Time Per Response:* 240 hours.

*Total Annual Burden:* 35,520 hours.

*Needs and Uses:* Survey data are used in monitoring the airline industry, negotiating international agreements, selecting new international routes and selecting U.S. air carriers to operate international routes.

Issued in Washington, DC, on April 17, 2000.

**Donald W. Bright,**

*Acting Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 00–9213 Filed 4–12–00; 8:45 am]

**BILLING CODE 4910–62–U**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

### Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request, ICR abstracted below has been forwarded to the Office of Management and Budget, OMB for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 5, 2000, 65 FR 553–554.

**DATES:** Comments must be submitted on or before May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, NW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

**Bureau of Transportation Statistics, BTS**

*Title:* Report of Financial and Operating Statistics for Small Aircraft Operators—Form 298–C.

*Type of Request:* Extension of a currently approved Collection.

*OMB Control Number:* 2138–0009.

*Form(s):* BTS Form 298-C.

*Affected Public:* Small certificated and commuter air carriers.

*Abstract:* Small certificated and commuter air carriers submit BTS Form 298–C, which provides basic financial, traffic, and operating data. DOT uses the data in safety surveillance, essential air service determinations, airport improvement, air traffic control, setting the Alaska mail rate, etc.

*Estimated Annual Burden Hours:* 4,720.

**ADDRESS:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 7, 2000.

**Donald W. Bright,**

*Acting Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 00–9212 Filed 3–12–00; 8:45 am]

**BILLING CODE 4910–FE–P**

Federal Register

**Thursday,**
**April 13, 2000**

## Part II

# Environmental Protection Agency

**40 CFR Part 52**

**Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard; Proposed Rule**

**Interim Final Determination That State Has Corrected the Plan Deficiency and Stay of Sanctions; Phoenix PM–10 Nonattainment Area, Arizona; Interim Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[AZ092–002; FRL–6575–3]**

## Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve provisions of the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix) Nonattainment Area, February 2000, and the control measures on which it relies, that address the annual PM–10 national ambient air quality standard. We also propose to grant Arizona's request to extend the Clean Air Act deadline for attaining the annual PM–10 standard in the Phoenix area from 2001 to 2006. Finally, we propose to approve two particulate matter rules adopted by the Maricopa County Environmental Services Department and Maricopa County's Residential Woodburning Restrictions Ordinance.

**DATES:** Comments on this proposal must be received in writing by June 12, 2000. Comments should be addressed to the contact listed below.

**ADDRESSES:** Comments may be mailed to: Frances Wicher, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of docket No. AZ–MA–00–001, containing the technical support document (TSD) and other material relevant to EPA's proposed action, is available for public inspection at EPA's Region 9 office during normal business hours.

A copy of the docket is also available for inspection at: Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217. Maricopa Association of Governments, 302 North 1st Street, Phoenix, Arizona 85003, (602) 254–6300.

### Electronic Availability

This document and the Technical Support Document (TSD) are also available as electronic files on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1238, email: wicher.frances@epa.gov.

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### Summary of Today's Proposals

We are proposing to approve the serious area air quality plan for attainment of the annual PM–10 standard in the Phoenix, Arizona, metropolitan area.[1] Our proposed actions are based on our initial determination that this plan complies with the Clean Air Act's requirements for attainment of the annual PM–10 standard in serious PM–10 nonattainment areas.

Specifically, we propose to approve the following elements of the plan as they apply to the annual PM–10 standard:

- the base year emissions inventory of PM–10 sources,
- the demonstration that the plan provides for implementation of reasonably available control measures (RACM) and best available control measures (BACM),
- the demonstration that attainment of the PM–10 annual standard by the Clean Air Act deadline of December 31, 2001 is impracticable,
- the demonstration that attainment of the PM–10 annual standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006,

[1] There are two separate national ambient air quality standards (NAAQS) for PM–10, an annual standard of 50 $\mu g/m^3$ and a 24-hour standard of 150 $\mu g/m^3$.

• the demonstration that the plan provides for reasonable further progress and quantitative milestones,
• the demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state, and can feasibly be implemented in the area.
• the demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the annual PM–10 standard, and
• the transportation conformity budget.

We are also proposing to grant Arizona's request to extend the attainment date for the annual PM–10 standard from December 31, 2001 to December 31, 2006.

Finally, we are proposing to approve Maricopa County's fugitive dust rules, Rules 310 and 301.01, and its residential woodburning restriction ordinance.

This preamble describes our proposed actions on the Phoenix area plan and provides a summary of our evaluation of the plan. Our detailed evaluation of the plan can be found in the technical support document (''EPA TSD'') that accompanies this proposal. A copy of the EPA TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

**Summary of the MAG Plan**

We are evaluating and proposing action on the Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area, February 2000 (''MAG plan''). This plan was developed by the Maricopa Association of Governments (MAG), the lead air quality planning agency in Maricopa County, with the assistance of the Maricopa County Environmental Services Department (MCESD), the Arizona Department of Environmental Quality (ADEQ), and the cities and towns in the Maricopa County nonattainment area. ADEQ submitted the final plan as a revision to the Arizona State Implementation Plan (SIP) on February 16, 2000.

We are also evaluating and proposing action on the December 11, 1997 submittal of Serious Area Committed Particulate Control Measures for PM–10 for the Maricopa County Nonattainment Area and Support Technical Analysis, MAG, December 1997. This submittal contains additional control measures that are relied on in the MAG plan. We consider the measures in this submittal to be part of the MAG plan and have evaluated them as such.

Finally, we are also evaluating and proposing to act on the most recent revisions to MCESD's Rule 310, Fugitive Dust Sources (adopted February 16, 2000) and Rule 310.01, Fugitive Dust from Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways (adopted February 16, 2000). We are also proposing to approve the revised Maricopa County Residential Woodburning Restrictions Ordinance (adopted November 17, 1999).

As submitted, the revised MAG plan consists of the main plan document, four volumes of technical appendices, and four volumes of commitments from various agencies to implement PM–10 controls. The plan contains a 1994 regional PM–10 emissions inventory and uses the urban airshed model/limited chemistry version (UAM/LC) to model air quality in 1995 as a base year and in 2006 as the attainment year. The plan includes a BACM analysis and a demonstration that attainment by 2001 is impracticable. It also includes the State's request for a five year extension of the attainment date, a demonstration that the plan provides for the most stringent measures found in other areas' plans or used in practice, and a demonstration of attainment by December 31, 2006. The plan shows that the principal sources contributing to PM–10 exceedances in the Phoenix area are fugitive dust sources, such as construction sites, vacant lots, paved and unpaved roads, and various other dust sources. The principal controls relied on for attainment are controls on these fugitive dust sources.

The MAG plan addresses both the annual and 24-hour PM–10 standards. We are not at this time proposing any actions regarding the plan's compliance with the statutory requirements relating to the 24-hour standard. As we explain in more detail later, the annual PM–10 standard is a separate air quality standard from the 24-hour one; therefore, we can and must separately evaluate a plan's compliance with the statutory requirements for each standard. We do not need to do these reviews concurrently.

The MAG plan also contains contingency measures as required by CAA section 172(c)(9). We are not proposing action on these contingency measures at this time. Contingency measures are a distinct provision of the Clean Air Act that we may act on separately from the attainment requirements.

**PM–10 Air Quality in the Phoenix Metropolitan Area**

*A. The Maricopa Nonattainment Area and its PM–10 Air Quality*

The Maricopa County (Phoenix) PM–10 nonattainment area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale as well as 17 other jurisdictions and considerable unincorporated County lands.[2] 40 CFR 81.303. The area is home to almost 3 million people.

The area violates both the annual and 24-hour PM–10 standards. In 1990, the area was designated nonattainment for PM–10 and classified as moderate. In 1996, because of continuing violations of both PM–10 standards, the area was reclassified to serious. 61 FR 21372 (May 10, 1996).

As noted before, the principal contributors to elevated PM–10 levels in the Phoenix area are fugitive dust sources such as construction sites, unpaved roads, vacant lots and paved road dust. Also contributing to the PM–10 problem, but to a much lesser degree than fugitive dust, are internal and external combustion sources including directly-emitted PM–10 from automobiles, trucks, construction equipment, bus, residential woodburning and industrial, commercial, and residential use of natural gas and fuel oil. See MAG plan, 3–5.

*B. PM–10 Air Quality Planning in the Phoenix Metropolitan Area*

The MAG plan is the latest in a series of air quality plans addressing the PM–10 problem in Phoenix. These previous plans are:

• *1991 MAG Moderate Area Plan.* Arizona submitted this plan in 1991 and revisions to it in 1993 and 1994. The 1991 plan contained a demonstration that attainment was impracticable by the CAA's deadline for moderate areas, December 31, 1994. We initially approved this plan in 1995 (60 FR 18010 (April 10, 1995)); however, the 9th Circuit Court of Appeals vacated our approval in 1996, finding among other things that the plan did not address the 24-hour PM–10 standard. *Ober* v. *EPA,* 84 F.3d 304 (9th Cir. 1996). In 1998, we disapproved the 1991 plan's reasonably available control measure (RACM) demonstration for the annual standard because the plan failed to provide for the implementation of RACM on

[2] The Maricopa nonattainment area also includes the town of Apache Junction in Pinal County. Apache Junction is covered by a separate air quality plan and will be addressed in a later action.

number of significant sources of PM–10, including unpaved roads. The failure to provide for the implementation of RACM also meant that the plan could no longer conclusively demonstrate the impracticability of attainment of the annual standard by December 31, 1994, so we also disapproved the impracticability demonstration. 63 FR 15919, 15925 (April 1, 1998).

• *Microscale Plan.* Arizona submitted this plan in 1997 as a response to the 9th Circuit's findings in *Ober.* The plan addressed the CAA's serious area PM–10 requirements for attaining the 24-hour standard around four representative air quality monitors (that is, at four localized or ''microscale'' sites) in the Phoenix area. It found that 24-hour exceedances in the Phoenix area are mainly caused by fugitive dust from construction, agriculture, unpaved roads and parking lots, and disturbed vacant land. We approved the plan in part but also disapproved it in part because it did not provide for the implementation of RACM or BACM on agricultural sources, unpaved roads, unpaved parking lots, and disturbed vacant lots and did not demonstrate attainment at two of the four sites. 62 FR 41856 (August 4, 1997).

• *1998 Moderate Area Federal Implementation Plan* (FIP). We promulgated this plan on August 3, 1998. It provided for the implementation of RACM on the significant sources—unpaved roads, unpaved parking lots, disturbed vacant lots, and agricultural sources—left unaddressed by the 1991 MAG moderate area plan and the Microscale plan.[3] The FIP demonstrated that the implementation of RACM was insufficient for attainment of the 24-hour and annual standards by Phoenix area's attainment deadline of December 31, 2001.[4] 63 FR 41326 (August 3, 1998).

A more detailed history of PM–10 planning in the Phoenix area can be found in the EPA TSD.

[3] The FIP's requirements for unpaved roads, unpaved parking lots and disturbed vacant lots are codified at 40 CFR 52.128. We withdrew the FIP's agricultural requirements, formerly codified at 40 CFR 52.127, when we approved similar State requirement in 1999. 64 FR 34726 (June 29, 1999).

[4] At the time we promulgated the FIP in 1998, the moderate PM–10 area deadline of December 31, 1994 had passed and we had reclassified the Phoenix area to serious. As a result the only statutory attainment deadline then applicable to the Phoenix area, and thus the deadline applicable to our moderate area FIP, was the serious area deadline, i.e., as expeditiously as practicable but not later than December 31, 2001. See 63 FR 15919, 15926.

*C. Clean Air Act Sanctions on the Phoenix Area*

Our 1998 disapprovals of parts of the 1991 MAG moderate area plan started sanction clocks under CAA section 179(a). Under section 179(a), once we disapprove a SIP provision because it fails to meet a CAA requirement, a State has 18 months to correct the deficiency that resulted in the disapproval before the first of two sanctions goes into place. If the state still has not corrected the deficiency within 24 months of the disapproval, the second sanction goes into place.

The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanctions regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

On August 3, 1998, we published our disapprovals of the RACM and attainment demonstrations for the annual standard in the 1991 MAG moderate area plan. 63 FR 41326. When these disapprovals became effective 30 days later on September 2, 1998, the sanction clocks started. The first of these sanction clocks expired on March 2, 2000 and the 2:1 offset sanction is now in place in the Phoenix area. The second sanction clock for the highway funding limitations is set to expire on September 2, 2000.

Under section 179(a) and our sanctions regulations at 40 CFR 52.31(d)(1), we must approve a SIP revision that corrects the deficiencies to permanently end the sanctions clocks and lift any imposed sanctions. However, we may temporarily stay the clocks and any imposed sanctions if we propose to approve a SIP revision that corrects the deficiencies and have issued an interim final determination that the State has corrected the deficiencies. 40 CFR 52.31(d)(2)(i).

In a rule being published concurrently with this proposal, we are issuing an interim final determination that, based our proposed findings here, Arizona has more than likely corrected the deficiencies that resulted in our August 1998 disapprovals.

**The Clean Air Act's Planning Requirements for Serious PM–10 Areas and EPA's Guidance on Meeting these Requirements**

The Phoenix area is a PM–10 nonattainment area that has been reclassified to serious because it failed to attain by the moderate area attainment date of December 31, 1994. Such an area must submit, within 18 months of the reclassification, revisions to its implementation plan that address the CAA requirements for serious PM–10 nonattainment areas. CAA section 189(b)(2). These requirements are:

(a) assurances that best available control measures (BACM) for the control of PM–10 shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B)); [5]

(b) assurances that best available control technology (BACT) on major stationary sources of PM–10 precursors shall be implemented no later than 4 years after the area is reclassified except where EPA has determined that such sources do not contribute significantly to exceedances of the PM–10 standards (CAA section 189(e));

(c) a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or, where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2001 is impracticable (CAA sections 188(c)(2) and 189(b)(1)(A));

(d) quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by the applicable attainment date (CAA sections 172(c)(2) and 189(c)); and

(e) a comprehensive, accurate, current inventory of actual emissions from all sources of PM–10. (CAA sections 172(c)(3)).

Serious area PM–10 plans must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111.

Except for the requirements for the implementation of RACM and BACM and for extension requests, we will discuss our policies for each of these requirements when we discuss our evaluation of that section of the MAG plan later in this preamble.

[5] When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains and is augmented by the requirement to implement BACM. Thus, a serious area PM–10 plan must, in addition to BACM, provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan.

We have issued a General Preamble, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), and Addendum to the General Preamble (''Addendum''), 59 FR 41998 (August 16, 1994), describing our preliminary views on how we intend to review SIPs submitted to meet the Clean Air Act's requirements for PM–10 plans. We have also issued other guidance documents related to PM–10 plans or provisions of these plans. These other guidance documents will be cited as appropriate.

*A. Implementation of Best Available Control Measures*

Under section 189(b)(2), serious area PM–10 plans must provide assurances that BACM will be implemented in the area no later than four years after the area is reclassified as serious. For Phoenix, the BACM implementation deadline is June 10, 2000.

The Act does not define what constitutes BACM. We consider BACM to be a particular level of control, in this case the best, on a source or source category. More specifically, we have defined BACM to be, among other things, the maximum degree of emission reductions achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010. We also consider BACM as going beyond existing RACM-level controls, such as expanding the use of RACM controls (e.g., paving more miles of unpaved roads). Addendum at 42013. Additionally, we believe that BACM should emphasize prevention rather than remediation (e.g., preventing track out at construction sites rather than simply requiring clean up of tracked-out dirt). Addendum at 42013.

A serious area plan must provide for the implementation of BACM on each significant (*i.e.*, non-de minimis) source category. Addendum at 42011. In guidance, we have established a presumption that a ''significant'' source category is one that contributes 1 $\mu g/m^3$ or more of PM–10 to a location of an annual standard violation. Addendum at 42011. However, whether the threshold should be lower than this in any particular area depends upon the specific facts of that area's nonattainment problem. Specifically, in areas that are demonstrating attainment by December 31, 2001, it depends on whether requiring the application of BACM on source categories below a proposed de minimis level would meaningfully expedite attainment. In areas that are claiming the impracticability of attainment by December 31, 2001, it depends upon whether requiring the application of BACM on source categories below a proposed de minimis level would make the difference between attainment and nonattainment by the serious area deadline of December 31, 2001.[6]

We have outlined in our guidance a multi-step process for identifying BACM. Addendum at 42010–42014. The steps are:

1. develop a detailed emission inventory of PM–10 sources and source categories,

2. model to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant,

3. identify potential BACM for significant source categories including their technological feasibility, costs, and energy and environmental impacts if needed to determine BACM, and

4. provide for the implementation of the BACM or provide a reasoned justification for rejecting any potential BACM.

*B. Implementation of Reasonably Available Control Measures*

When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains. Thus, a serious area PM–10 plan must also provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan.

However, we do not normally conduct a separate evaluation to determine if a serious area plan's measures also meet the RACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement, as generally subsuming the RACM requirement (i.e. if we determine that the measures are indeed the ''best available,'' we have necessarily concluded that they are ''reasonably available''). Therefore, a separate analysis to determine if the measures represent a RACM level of control is not necessary. Consequently, our proposed approval of the MAG plan's provisions relating to the implementation of BACM is also a proposed finding that the plan provides for the implementation of RACM.

*C. Extension of the Attainment Date Beyond 2001*

Section 188(e) of the Act allows us to extend the attainment date for a serious area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. apply to us for an extension of the PM–10 attainment date beyond 2001,

2. demonstrate that attainment by 2001 is impracticable,

3. have complied with all requirements and commitments applying to the area in its implementation plan,

4. demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and

5. submit a demonstration of attainment by the most expeditious alternative date practicable.

In determining whether to grant an extension and the appropriate length of the attainment date extension, we may consider:

1. the nature and extent of the nonattainment problem,

2. the types and number of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport),

3. the population exposed to concentrations in excess of the standard,

4. the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and

5. the technological and economic feasibility of various control measures.

We may grant only one extension for an area and that extension cannot be for more than 5 years after 2001; that is, the extended attainment date can be no later than December 31, 2006. CAA section 188(e).

To date, we have not issued any policy or regulation interpreting the attainment date extension requirements for urban areas like Phoenix. Therefore, before reviewing Arizona's request for an extension, we will first discuss how we propose to interpret section 188(e).

The following is our preliminary interpretation of the section 188(e) requirements and we request comment on it. We emphasize that this is our preliminary view and it is subject to modification as we gain more experience reviewing on extension requests from other areas.

[6] This principle is best illustrated by an example: In Area A, attainment of the annual standard by December 31, 2001 requires that total PM–10 emissions in the area be reduced to 200 tons per day (tpd). After application of BACM to all source categories above the proposed de minimis level, total emissions in the area are reduced to 220 tpd. BACM on the proposed de minimis source categories would reduce total emissions a further 5 tons to 215 tpd. Since application of BACM to the proposed de minimis source categories still leaves emissions above the attainment level of 200 tpd, the proposed de minimis level is appropriate.

We have listed above the five requirements a State must meet before we can consider granting an attainment date extension. We discuss each requirement in order:

1. Apply for an Attainment Date Extension

The State must apply in writing to EPA for an extension of the attainment deadline. The request should accompany the SIP submittal containing the most expeditious alternative attainment demonstration. The public must be provided reasonable notice and a public hearing on the request before it is submitted.

Extension requests are not SIP submittals per se and are therefore not subject to the requirements of the Clean Air Act and our regulations for public notice and hearing on SIP revisions. However, because they can greatly affect the content and ultimate approvability of a serious area PM–10 plan, we believe a state must give the public an opportunity, consistent with the requirements for SIP revisions, to comment on an extension request prior to submitting it to us.

2. Demonstrate That Attainment by 2001 is Impracticable

In order to demonstrate impracticability, the plan must show that the implementation of BACM (as determined by our guidance) on significant source categories will not bring the area into attainment by December 31, 2001. BACM is the required level of control for serious areas that must be in place before the 2001 attainment date; therefore, we believe that it is reasonable to interpret the Act to require that a state provide for at least the implementation of BACM on significant source categories before it can claim impracticability of attainment by 2001. This interpretation parallels our interpretation of the impracticability option for moderate PM–10 nonattainment areas in section 189(a)(1)(B). In moderate areas, RACM was required before a moderate area plan could show impracticability of attainment by 1994, the moderate area attainment deadline. General Preamble at 13544.

The statutory provision for demonstrating impracticability requires that the demonstration be based on air quality modeling. See section 189(b)(1)(A).

3. Complied With all Requirements and Commitments in its Implementation Plan

We interpret this criterion to mean that the State has implemented the control measures in the SIP revisions it has submitted to us to address the CAA requirements in sections 172 and 189 for PM–10 nonattainment areas.

We read this provision not to require the area to have a fully approved SIP that meets the CAA's requirements for moderate areas. We base this reading on the plain language of section 188(e) which requires the state to comply with all requirements and commitments pertaining to that area in the implementation plan but does not require that the state comply with all requirements pertaining to the area in the Act. For the same reason we also read this provision not to bar an extension if all or part of an area's moderate area plan is disapproved or has been promulgated as a FIP.

4. Demonstrate the Inclusion of the Most Stringent Measures

The fourth extension criterion requires the State to ''demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any State, or are achieved in practice in any State, and can feasiblely be implemented in the area.'' CAA section 188(e).

The requirement for most stringent measures (MSM) is similar to the requirement for BACM. We define BACM to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case by case basis considering energy, economic and environmental impacts. Addendum at 42010. The Act establishes the deadline for implementing BACM as four years after an area's reclassification to serious. CAA section 189(b)(1)(A).

We proposed to define a ''most stringent measure'' in a similar manner: the maximum degree of emission reduction that has been required or achieved from a source or source category in other SIPs or in practice in other states and can feasiblely be implemented in the area. The Act does not specify an implementation deadline for MSM. Because the clear intent of section 188(e) is to minimize the length of any attainment date extension, we propose that the implementation of MSM should be as expeditiously as practicable.

Given this similarity between the BACM implementation and MSM requirements, we believe that determining MSM should follow a process similar to determining BACM, but with one additional step, to compare the potentially most stringent measure against the measures already adopted in the area:

1. develop a detailed emission inventory of PM–10 sources and source categories,

2. model to evaluate the impact on PM–10 concentrations over the standards of the various source categories to determine which are significant for the purposes of adopting MSM,

3. identify the potentially most stringent measures in other implementation plans or used in practice in other States for each significant source category and, for each measure, determine their technological and economic feasibility for the area,

4. compare the potentially most stringent measures for each significant source category against the measures, if any, already adopted for that source category, and

5. provide for the adoption and expeditious implementation of any MSM that is more stringent than existing measures or, in lieu of adoption, provide a reasoned justification for rejecting the potential MSM, *i.e.,* why such measures cannot be feasiblely implemented in the area.

The level of control resulting from a most stringent measure depends on how well other areas have chosen to control their sources. If a source category has not been well controlled in other areas then MSM may in fact result in a rather low level of control. This contrasts with BACM which is determined independently of what other areas have done and depends only on what is the best level of control feasible for an area.

Because BACM is the best level of control feasible for an area, it would be easy for the MSM requirement to result in no more controls and no more emission reductions in an area than result from the implementation of BACM. Given the strategy in the nonattainment provisions of the Act to offset longer attainment time frames with more stringent control requirements, we need to interpret the MSM provision to assure that it results in additional controls beyond the set of measures adopted as BACM. The primary ways to do this are (1) to require that more sources and source categories be subject to MSM analysis than to BACM analysis, that is, by lowering the threshold for what is considered a de minimis source category and (2) to require reanalysis of any measures garnered from other areas that were rejected during the BACM analysis because they could not be implemented by the BACM-implementation deadline to see if they

are now feasible for the area given the longer attainment date.

*De Minimis Thresholds.* What constitutes a de minimis source category for BACM is dependent upon the specific facts of the nonattainment problem under consideration. In particular, it depends upon whether requiring the application of BACM for such sources would make the difference between attainment and nonattainment by the serious area deadline. We propose to use a similar approach for judging what constitutes a de minimis source category for MSM but instead of the attainment/nonattainment test, we propose to use a test of whether MSM controls on the de minimis sources would result in more expeditious attainment.

We would not review an MSM analysis in a plan if the plan did not demonstrate expeditious attainment since one prerequisite for granting an extension is that the plan demonstrate attainment. Therefore, any de minimis standard for MSM that relied on the difference between attainment and nonattainment would be meaningless because no additional controls are needed for attainment beyond those already in the plan. Our responsibility under section 188(e), however, is to grant the shortest practicable extension of the attainment date by assuring the plan provides for attainment as expeditiously as practicable. Thus, one means of determining an appropriate de minimis level is to determine if applying MSM to the proposed de minimis source categories would meaningfully expedite attainment. If it did, then the de minimis level is too high, and if it did not, then the de minimis level is appropriate.[7]

*Technological Feasibility.* In the MSM analysis, a state must evaluate the application of controls from elsewhere to sources in its own area. In many cases, these sources are already subject to local control measures. In these situations, part of determining if a control is technologically feasible is determining if the new control can be integrated with the existing controls without reducing or delaying the emission reductions from the existing control. If it cannot, then we would not, in general, consider the measure to be technologically feasible for the area.

[7] In extension areas, the applicable control requirement after the December 31, 2001 attainment date is the MSM and expeditious attainment requirements of section 188(e). Thus, for measures implemented after December 31, 2001, a state need only show that the measure meets at minimum the MSM level of control and, combined with all other measures, is sufficient for expeditious attainment. A state has no obligation to show that the measure meets a BACM-level of control.

*Economic Feasibility.* Because cost is rarely used to justify rejection of a measure in the MAG plan, we will not attempt to establish a general guide for evaluating when a measure is economically infeasible but instead will address the issue on a case-by-case basis as needed.

We propose to use the following approach in evaluating the selection of the most stringent among multiple measures, *i.e.,* evaluating the determination of when one is more stringent than another:

1. The determination will be made on a source category basis. When only a single measure is applicable to a source category then we will compare the measures directly. However, in many cases multiple measures apply to a single source category (*e.g.,* unpaved roads which in the MAG plan are controlled both by Rule 310.01 and through City and County commitments). In these cases, we will evaluate the impact of the overall control strategy on emissions in the source category against the impact of the overall control strategy on the source category in other areas and will not compare individual measures within the source category.

2. We will review all the elements of a rule that apply to a specific type of source as an inseparable measure. A rule's applicability and emission limitations (as they apply to a single type of source) together define its stringency. They are not separable elements that can be compared in isolation to another rule.

3. Because stringency is based on an emissions level, we will not use a measure's implementation mechanisms (*e.g.,* rule versus commitment), funding level, compliance schedule, resources available for enforcement, or other similar items as criteria for judging relative stringency. (We do consider these items when judging whether the plan provides for *implementation* of MSM.)

Finally, we address how we view the ''to the satisfaction of the Administrator'' qualifier on the requirement that the State demonstrate that its plan includes the most stringent measures. The presence and wording of this qualifier indicate that Congress granted us considerable discretion in determining whether a plan in fact includes MSM. Under the terms of section 188(e), we believe that we can still accept an MSM demonstration even if it falls short of having every MSM possible. To intuit the limits of this discretion, we again look to the overall intent of section 188(e), that we grant as short an extension as practicable. In concrete terms, this means that when judging the overall adequacy of the MSM demonstration, we will give more weight to a failure to include MSM for source categories that contribute the most to the PM–10 problem in Phoenix and to the failure to include measures that could provide for more expeditious attainment and less weight to a failure to include MSM for source categories that contribute little to the PM–10 problem and/or would not expedite attainment.

5. Demonstrate Attainment by the Most Expeditious Alternative Date Practicable

Section 189(b)(1)(A) requires that a serious area plan demonstrate attainment, using air quality modeling, by the most expeditious date practicable after December 31, 2001. This demonstration is the final criterion that must be met before we may grant an extension request.

Our determination of whether the plan provides for attainment by the most expeditious date practicable will depend on whether the plan provides for implementation of BACM by the BACM implementation deadline and MSM as expeditiously as practicable.

Please see section 4 of the EPA TSD for an additional discussion of our proposed interpretation of the extension requirements.

### *D. Separating Our Rulemaking Actions on the Annual and 24-hour Standards*

As we discussed above, there are two PM–10 NAAQS, an annual standard of 50 $\mu g/m^3$ and a 24-hour standard of 150 $\mu g/m^3$. In this proposed action, we are evaluating the MAG plan only for its compliance with the Clean Air Act's requirements for attaining the annual PM–10 standard. We are not, at this time, evaluating the plan for its compliance with the Act's requirements for the 24-hour PM–10 standard. Under section 110(k)(2), we have until February 25, 2001—one year after the completeness finding—to act on the balance of the plan that was submitted on February 16, 2000.

The two PM–10 standards are independent and must be addressed independently by states in their SIPs. This independence was highlighted by the Ninth Circuit Court of Appeals in *Ober* v. *EPA,* 84 F.3d 304 (9th Cir. 1996). In *Ober,* the Court was reviewing our approval of the MAG moderate area plan:

> The general provisions of the Clean Air Act repeatedly emphasize that implementation plans must provide for attainment of the NAAQS as expeditiously as practicable. For PM–10, the EPA promulgated two separate NAAQS-the annual standard and the 24-hour standard-which differ in the following

respects. First, the 24-hour standard offers protection against dangerous short-term exposures to high PM–10 levels, a protection that is distinct from the protection against chronic degradation in lung function provided by the annual standard. Second, the sources of PM–10 violation differ for the annual and the 24-hour: violations of the 24-hour standard are generally caused by localized sources such as construction projects, whereas violations of the annual standard tend to be caused by more diverse, dispersed sources. Third, control measures differ in effectiveness for the 24-hour standard and the annual standard.

*These differences emphasize the importance of viewing PM–10's two NAAQS individually and of requiring independent treatment of them in an implementation plan.* . . . . Such independent treatment furthers the Clean Air Act's goals of protecting health and achieve clean air.

*Ober* at 309 (emphasis added).

If a state must treat each PM–10 NAAQS independently in the implementation plan, then we also must treat each PM–10 NAAQS independently when reviewing the plan's compliance with the Clean Air Act. Therefore, it is necessary for us to review the MAG plan's compliance against the CAA requirements as they apply to the annual standard and again review them against the CAA requirements as they apply to the 24-hour standard. There is no mandate that we conduct these reviews concurrently even if Arizona submitted a single document to meet the requirements for both standards since, effectively, we must treat it as if it contained two separate plans.

We have chosen not to act at this time on the 24-hour provisions of the revised MAG plan because the State is still working on quantifying emission reductions from the best management practice measures (BMPs) intended to reduce fugitive dust from agricultural sources. Attainment of the 24-hour standard in the Phoenix area, unlike the annual standard, depends in part on emission reductions from these BMPs. Once Arizona quantifies the reductions, it will revise the 24-hour attainment demonstrations and resubmit them to us. We expect these changes later this year. We do not believe it is an efficient use of our resources to act now on the 24-hour provisions currently in the MAG plan knowing that they will be substantially revised prior to our statutory deadline to act on them.

**Discussion of the MAG Plan's Compliance with the Clean Air Act's Requirements**

The following sections present a condensed discussion of our evaluation of the MAG plan's compliance with the applicable CAA requirements for attainment of the annual PM–10 standard. Our complete evaluation is found in the EPA TSD for this proposal. We urge anyone wishing to comment on this proposal to first review the TSD before preparing comments. A copy of the TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

*A. Completeness of the SIP Submittals*

The first step we take after receiving a SIP submittal is to determine if it is complete. CAA section 110(k)(1)(B) requires that we review all SIPs and SIP revisions for completeness within 60 days of receipt of the submittal. The completeness review allows us to quickly determine if a state has submitted a SIP revision, including all needed supporting material, on which we can take action. We make completeness determinations using criteria we have established in 40 CFR part 51, appendix V.

We found ADEQ's February 16, 2000 submittal (received on February 23, 2000) of the final revised MAG serious area PM–10 plan complete. We notified the State of our completeness determination on February 25, 2000. See Letter, David P. Howekamp, EPA, to Jacqueline Schafer, ADEQ.

If we do not make a completeness determination, a submittal becomes complete by default 6 months after we receive it. See 100(k)(1)(B). We did not review the 1997 submittal of control measures for completeness and it became complete by default on June 15, 1998.

We found Arizona's submittals containing MCESD's Rule 310 and 310.01 and the revised Maricopa County residential woodburning ordinance complete on March 31, 2000.

*B. Adequacy of the Transportation Conformity Budgets*

Section 176(c) of the Clean Air Act requires that federally funded or approved transportation plans, programs, and projects in nonattainment areas ''conform'' to the area's air quality implementation plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards. We have issued a conformity rule that establishes the criteria and procedures for determining whether or not transportation plans, programs, and project conform. See 40 CFR part 93, subpart A.

One of the primary tests for conformity is to show transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and meet the air quality standards are set in an area's attainment and/or reasonable further progress (RFP) plans and are known as the ''emissions budget for motor vehicles.'' Emissions budgets are established for specific years and specific pollutants. See 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision may be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine adequacy of submitted emission budgets are outlined in our conformity rule in 40 CFR 93.118(e)(4).

The MAG plan establishes a mobile source emissions budget of 59.7 mtpd. This regional budget is applicable for both the annual and 24-hour PM–10 standards. The on-road mobile portion of the budget, which includes emissions from reentrained road dust, vehicle exhaust, and travel on unpaved roads, is 58.6 mtpd. The road construction portion of the budget is 1.1 mtpd. MAG plan, p. 8–13.

On March 30, 2000, we have found adequate for transportation conformity purposes this motor vehicle emission budget. As a result of our adequacy finding, MAG and the Federal Highway Administration are required to use this budget in future conformity analyses.

*C. Emission Inventory*

CAA section 172(c)(3) requires all nonattainment area plans to contain a comprehensive, accurate, and current inventory. Our policies require that the inventory be fully documented.

The MAG plan describes annual and average annual day emissions for 1994 from point, area, nonroad, on-road, and nonanthropogenic sources in the Maricopa County portion of the 2,880 square mile nonattainment area. The inventory includes emissions of PM–10, PM–2.5, ammonia ($NH_3$), nitrogen oxides ($NO_X$), and sulfur oxides ($SO_X$).

The inventory shows that the dominant sources of emissions in the Phoenix area are paved road dust (39.1 percent), unpaved roads, (21.6 percent) and construction-related fugitive dust (20.1 percent). Much lower but still important contributors are directly-emitted PM–10 from non-road engines (7.0 percent) and on-road motor vehicles (3.3 percent), all stationary area sources, *e.g.,* woodburning (6.1 percent) and stationary point sources (2.7 percent). MAG plan, Table 3–1.

Generally the inventories are very well documented with the

documentation exceeding our guidance requirements.

*Current:* The base year, 1994, is a reasonably current year, considering the length of time needed to develop an inventory, perform the modeling, develop and adopt control measures, and hold public hearings on such a large and technically-complex plan like the MAG plan.

*Comprehensive:* The MAG plan inventories are fairly complete, considering a few emission factors are unknown for some of the smaller sources of PM–10. The inventories did not include emissions of volatile organic compounds (VOC) which is a precursor of secondary PM–10 because the plan found there is a negligible impact on ambient measurements of PM–10 from VOC aerosol. We concur with this finding and that VOC sources need not be inventoried for the PM–10 plan.

*Accurate:* In developing the inventory, MAG and MCESD closely followed our guidance relative to the use of emission factors, activity estimates, and growth and control factors, and the other source specific emission estimation methodologies (continuous emission monitoring, annual stack tests, and mass balance methods). Source specific methods were used to the maximum extent possible as they are inherently more accurate than emission factors. The relative accuracy of each estimate underwent the prescribed quality assurance procedures to eliminate all possible errors. The inventory is thus as accurate as inventories can be.

Because we find that the inventory is current, comprehensive, and accurate, we propose to approve it under CAA section 172(c)(3).

*D. Adequate Monitoring Network*

CAA section 110(a)(2)(B)(i) requires States to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. Our regulations in 40 CFR part 58 establishes specific regulatory requirements for operating air quality surveillance networks to measure ambient concentrations of PM–10, including measurement method requirements, network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as National Air Monitoring Stations (NAMS).

The MAG plan does not specifically address the adequacy of the PM–10 monitoring network in the Phoenix area. There is no requirement that it does. We are reviewing the adequacy of the monitoring network here because the plan relies on ambient data to characterize the extent and severity of the PM–10 problem in the Phoenix area and we need to assure that the monitoring network is adequate for this purpose.

In 1995, the base year for the air quality modeling, there were 18 monitoring sites collecting data in the Phoenix area, all of which were operated in accordance with our regulations. Most of these PM–10 monitoring sites were neighborhood scale sites with an objective of assessing population exposure. Given the widespread nature of the emission sources in the Phoenix area, we believe this focus was appropriate and that the network was adequate to characterize the extent and severity of the PM–10 problem in 1995.

*E. Contribution to PM–10 Exceedances of Major Sources of PM–10 Precursors*

Under CAA section 189(e), a state must apply the control requirements applicable to major stationary sources of PM–10 to major stationary sources of PM–10 precursors, unless we determine such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in the area. For the serious area plan, a ''major source'' is one that emits or has the potential to emit over 70 English tons per year (tpy) of sulfur oxides (SOx), nitrogen oxides (NOx), or ammonium.

PM–10 precursors react in the atmosphere to form ''secondary'' particulate, secondary because it is not directly emitted from the source. The MAG plan does not provide specific information on the impact of major precursor sources on Phoenix PM–10 levels; however, it does provide sufficient information on the contribution of total secondary particulates to PM–10 levels and the emissions from major precursor sources to estimate the impact.

All major stationary sources of PM–10 precursors are estimated to contribute just 0.24 $\mu g/m_3$ to the annual levels of PM–10. See EPA TSD section, ''BACT for Major Stationary Sources of PM–10 Precursors.'' This contribution is less than 0.5 percent of the annual PM–10 levels over the standard in the Phoenix area and less than 0.5 percent of the annual standard of 50 $\mu g/m^3$.

We believe that this small contribution is insignificant for the Phoenix area. PM–10 levels above the annual standard in Phoenix are almost exclusively caused by a few large source categories of fugitive dust, and it is BACM-level controls on these sources that are the key to expeditious attainment of the annual standard in the Phoenix area and not controls on small contributors such as major sources of PM–10 precursors.

We, therefore, propose to determine that major sources of PM–10 precursors do not contribute significantly to PM–10 levels in excess of the PM–10 NAAQS in the Phoenix area. As a result, Arizona is not required to apply BACT to major sources of PM–10 precursors in the Phoenix area.

*F. Implementation of Reasonably Available and Best Available Control Measures*

CAA section 189(b)(1)(B) requires that a serious area PM–10 plan provide for the implementation of BACM within four years of reclassification to serious. For Phoenix, this deadline is June 10, 2000. BACM must be applied to each significant area-wide source category. Addendum at 42011. As discussed above, we have established a four-step process for evaluating BACM in serious area PM–10 plans.

1. Determination of Significant Sources

The first step in the BACM analysis is to develop a detailed emission inventory of PM–10 sources and source categories that can be used in modeling to determine their impact on ambient air quality. Addendum at 42012.

The MAG plan uses three modeling studies of PM–10 sources in the Phoenix area to identify significant source categories. One of these studies evaluated significant sources using chemical mass balance (CMB) modeling performed on monitoring samples collected at 6 sites in 1989–1990. The two other studies evaluated significant sources using dispersion modeling of sources around 6 monitoring sites using data from 1992 through 1995.[8]

From these evaluations, the MAG plan identified 8 significant source categories and 12 insignificant source categories. MAG plan, p. 9–6.

The final list of significant source categories did not distinguish between those categories that are significant for the 24-hour standard and those significant for the annual standard; although previous studies have shown that some source categories are significant only for one or the other standard. Because the MAG plan did not distinguish significant source categories between the two standards, we will treat each of the listed significant source

[8] These studies are ''The 1989–90 Phoenix PM–10 Study,'' Desert Research Institute, April 1991; ''Particulate Control Measure Feasibility Study,'' Sierra Research, January 1997; and ''Plan for Attainment of the 24-hour PM–10 Standard, Maricopa County PM–10 Nonattainment Area,'' ADEQ, May 1997.

categories as significant for the annual standard.

For the annual standard, the MAG plan demonstrates that its selection of significant source categories is appropriate by showing that control on the de minimis source categories would not make the difference between attainment and nonattainment of the annual standard by 2001. According to the plan, total emissions in the area need to be reduced to 130 mtpd to attain the annual standard by 2001. After application of BACM, total emissions are reduced to 152 mtpd. MAG plan, p. 9–11. The 12 de minimis sources categories contribute in total 10.3 mtpd. MAG plan, Table 9–a. Totally eliminating these source categories would reduce total regional emissions to 142 mtpd, still 12 mtpd above the regional emissions level needed for attainment. MAG plan, pp. 9–10 through 9–12.

The 8 significant source categories are:

1. Paved road travel.
2. Unpaved road travel (includes unpaved parking lots).
3. Industrial paved road travel (paved and unpaved).
4. Construction site preparation (includes disturbed vacant lots that are not undergoing construction).
5. Agricultural tilling (includes all agricultural sources).
6. Residential wood combustion.
7. On-road and non-road motor vehicle exhaust.
8. Secondary ammonium nitrate.

MAG Plan, Table 9–1.

The 12 de minimis source categories are:

1. Stationary point sources.
2. Fuel combustion (excluding residential wood combustion).
3. Waste/open burning.
4. Agricultural harvesting.
5. Cattle feedlots.
6. Structural/vehicle fires.
7. Charbroiling/frying meat.
8. Marine vessel exhaust.
9. Airport ground support exhaust.
10. Railroad locomotive exhaust.
11. Windblown from fluvial channels.
12. Wild fires.

MAG plan, Table 9–a. The plan notes that several de minimis source categories are already subject to control or will be controlled in the future. MAG plan, p. 9–12.

We propose to find that the MAG plan has not excluded any source categories that should be considered significant from its list of significant source categories. The plan presents acceptable modeling to evaluate the impact of various PM–10 sources and source categories on PM–10 levels and to derive a comprehensive and conservative list of significant source categories.

Our proposal here does not mean that we believe all the source categories identified as significant in the MAG plan needed to be considered significant for the purpose of evaluating BACM. We believe that the MAG plan is conservative in its selection of significant source categories, that is, it may have included more source categories in its significant source list than are strictly needed. Thus our use of negative wording in our proposed finding: no significant source categories were excluded as opposed to only the significant categories were included. In our 1998 FIP, we derived a narrower list of significant sources based on more recent modeling than was used to develop the list in the MAG plan. See 63 FR 15920, 15932 (Table 2 and text).

2. Identification of Potential BACM

In preparing the list of candidate BACM, MAG reviewed our guidance documents on BACM, other EPA documents on PM–10 control, as well as PM–10 plans from other serious PM–10 areas in the West. It also evaluated controls proposed during public comment. MAG plan, pp. 9–24 through 9–29.

The MAG plan appropriately screened the list of candidate BACM to eliminate measures that did not apply to significant source categories in the area, were technologically infeasible for the area because they would not reduce PM–10 emissions, or duplicated other measures on the list. The MAG plan also provides cost effectiveness estimates for each of the candidate BACM. MAG plan, pp. 9–30 through 9–39.

We propose to find that the MAG plan identified and evaluated potential BACM for the Maricopa area consistent with our guidance. As we will discuss below in our evaluations of the implementation of BACM for each significant source category, we do not believe that the MAG plan left out any candidate BACM. We note that additional evaluation of control measures was done as part of the most stringent measure analysis. MAG plan, pp 10–25 & 10–26. Overall, the MAG plan presents one of the most comprehensive lists of potential BACM ever produced.

3. Implementation of RACM and BACM and Inclusion of MSM for Each Significant Source Category

In the following sections, we review the results of the MAG plan's BACM analysis. To present these results, we have grouped the emission generating activities that comprise the MAG plan's significant categories slightly differently from the plan, *e.g.,* we have addressed separately construction activities and disturbed vacant lands which are both included in the MAG plan's significant category of construction site preparation.[9] We have done this to make our evaluations of the plan's provisions for the implementation of BACM and inclusion of MSM clearer and thus, we believe, more understandable. However, despite the method of presentation, we have addressed the MAG plan's provisions for implementing RACM and BACM for each of the plan's significant source categories.

Also, because of the substantial overlap in the source categories and controls evaluated for BACM and those evaluated for MSM, we present our evaluation of the MAG plan's provisions for including MSM alongside our evaluation of the provisions for implementing RACM and BACM for each significant source category.

Finally, controls on a number of significant source categories are found in MCESD's fugitive dust rules, Rule 310 and Rule 310.01. MCESD has made extensive commitments to improve compliance and enforcement of these rules to assure that they achieve the emission reductions necessary for expeditious attainment. These commitments are an important component of our finding that the MAG plan provides for implementation of RACM and BACM and inclusion of MSM. We discuss them at the end of this section.

*a. Technology controls for on-road motor vehicle exhaust.* This category includes tailpipe and tire wear emissions of primary PM–10 from on-road motor vehicles. On-road motor vehicles include both gasoline and diesel-powered passenger cars, light, medium, and heavy duty trucks, buses, and motorcycles.[10]

[9] MAG plan uses this grouping despite the fact that disturbed vacant lands include lands that are disturbed for reasons other than construction activity.

[10] We will treat gasoline-and diesel-powered vehicles together here to preserve to the extent practicable the significant source groupings in the MAG plan; however, we believe they are in fact distinct categories. Almost 95 percent of diesel PM–10 emissions come from heavy-duty diesel trucks while 75 percent of gasoline PM–10 comes from the family car, that is, light duty cars and trucks (which include sports utility vehicles). See Table ORM–1 in the EPA TSD section ''Implementation of BACM and Inclusion of MSM for On-Road Motor Exhaust (Technology Standards).'' There is almost no overlap in the controls for the family car and those for heavy duty diesel trucks, key evidence that they are in fact distinct source categories. See Table ORM–4 in the EPA TSD.

The suggested technology-based measures for controlling emissions from on-road motor vehicle exhaust fall into one of five categories: new emission standards, inspection and maintenance programs, fuels, programs to encourage alternative fueled vehicle usage, and programs to accelerate fleet turnover. In total, the MAG plan considers 22 technology-based control measures. See MAG plan, Table 5–2. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential technology-based controls for on-road motor vehicle exhaust emissions including the potentially most stringent measures from other states.

For gasoline vehicles, Arizona has implemented one of the nation's best and most comprehensive enhanced I/M programs including expanding the program to areas surrounding Phoenix; has adopted its own Clean Burning Gasoline program which mandates the use of either Phase II federal reformulated gasoline or California reformulated gasoline; offers generous tax credits and deductions for conversion of vehicles to alternative fuels; and mandates federal, state, county, and municipal governments to convert their fleets to alternative fuels. MAG plan, pp. 7–2 through 7–24.

Arizona has instituted a heavy duty diesel I/M program, will require pre-1988 HDDV registered in the Phoenix nonattainment area to meet 1988 federal emission standards starting in 2004, has established a voluntary vehicle repair and retrofit program to encourage retrofitting and overhaul of heavy duty diesel engines to reduce emissions, and has limited diesel sulfur content to 500 parts per million (ppm). MAG plan, Chapter 7.

The California Air Resources Board's diesel fuel standards (CARB diesel) is one of the few identified motor vehicle controls not adopted by the State. The plan identifies this measure as a potential MSM. MAG plan, Table 10–7. The MAG plan claims that the measure is unreasonable on a cost basis. MAG plan, p. 9–46. We make no judgement on this claim given the great uncertainty regarding the potential cost of implementing CARB diesel in the Phoenix area. We do note that the State has already adopted half of the CARB diesel standards, the 500 ppm sulfur limit.[11]

Under our proposed policy for MSM in extension requests, we believe that we can find that the MAG plan provides for the inclusion of MSM to our satisfaction absent the adoption and implementation of CARB diesel because, based on information in the MAG plan, the on-road engine category's contribution to nonattainment in the Phoenix area is relatively low compared to other PM–10 dust sources and implementation of CARB diesel would not advance the attainment date.

According to the MAG plan, the on-road motor vehicle category contributes just 1.3 percent of the pre-control inventory in 2006, compared to construction dust at 43.8 percent, paved road dust at 20.4 percent, unpaved road dust at 13.1 percent, and windblown dust at 8.7 percent. MAG plan, Table 8–3. Adoption of CARB diesel would generate a total reduction of 0.8 mtpd in 2006. MAG plan, p. 10–37. It takes a 4 mtpd reduction to advance the annual standard attainment date one year (the minimum needed because it is an annual standard), so reductions from implementation of this measure are insufficient to advance the attainment date. See section on RFP and Quantitative Milestones.

As noted before, Arizona has in place one of the nation's most comprehensive programs to address on-road motor vehicle emissions. With the additional measures in the MAG plan (including a more stringent diesel I/M program and measures both encouraging and requiring diesel fleet turnover) the overall mobile source program is strengthened and goes beyond the existing program. Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned and acceptable justification for the rejection.

The MAG plan identified just a few measures from other areas as being more stringent than existing programs. These measures have either been adopted or we have concluded that the measures need not be included to assure the inclusion of MSM.

All the adopted BACM and MSM are already implemented, except for one. The requirement that pre-1988 heavy duty diesel vehicles registered in the nonattainment area meet 1988 federal emission standards will not be implemented until January 1, 2004 in order to provide sufficient lead time for modification or replacement of the non-complying heavy duty diesel vehicles.

We, therefore, propose to find that the combination of on-road motor vehicle technology controls and TCMs (described in the next section) in the MAG plan provides for the implementation of RACM and BACM and the inclusion of MSM for on-road motor vehicle exhaust.

*b. Transportation control measures (TCMs) for on-road motor vehicle exhaust and paved road dust.* TCMs can reduce PM–10 emissions in both the on-road motor vehicle exhaust and paved road dust source categories by reducing vehicle miles traveled (VMT) and vehicle trips. They can also reduce vehicle exhaust emissions through relieving congestion. Our serious area PM–10 guidance requires that plans identifying on-road motor vehicles as a significant sources must also evaluate the TCMs listed in section 108(f) of the CAA. Addendum at 42013.

In our review, we have primarily assessed the MAG plan's provisions for implementing RACM and BACM and including MSM through TCMs based on the measures' effectiveness in controlling directly-emitted PM–10 from vehicle exhaust. We have not assessed the plan based on the TCMs' potential benefit in controlling PM–10 precursors such as $NO_X$ and $SO_X$ because (1) from available ambient measurements, neither nitrates nor sulfates are important to overall PM–10 concentrations in the Phoenix area (See EPA TSD section, ''BACT for Major Stationary Sources of PM–10 Precursors'' which shows that total secondary particulates accounted for less than 4 $\mu g/m^3$ in 1995) and (2) Arizona has already targeted mobile source $NO_X$ and $SO_X$ through an aggressive set of mobile source controls which we believe cover the implementation of RACM and BACM and inclusion of MSM requirements for tailpipe $NO_X$ and $SO_X$. See discussion immediately above on technology controls for on-road motor exhaust.

In total, the MAG plan identifies 19 TCMs for consideration including the CAA section 108(f) measures. The plan does not identify any potentially more stringent TCMs from other areas. See EPA TSD section ''Implementation of BACM and MSM for On-Road Motor Vehicle Exhaust and Paved Road Dust (TCMs).'' We believe that this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential TCMs for on-road motor vehicle exhaust emissions and the potentially most stringent measures from other States.

Arizona has a long history of adopting and then enhancing programs to reduce emissions from on-road motor vehicles by reducing vehicle miles traveled,

[11] The other CARB diesel standard is a limit on the aromatic hydrocarbon content of no more than 10 percent by volume. CARB, Fact Sheet on California Diesel Fuel, March 1997.

vehicle trips, and/or congestion.[12] The area has an employer trip reduction ordinance which applies to employers of 50 or more, a public outreach program to encourage people to reduce driving, programs to improve bicycling and pedestrian travel, and an extensive program to synchronize traffic lights. In most instances, these programs were adopted and implemented as part of carbon monoxide and ozone control programs, but they also reduce PM–10.

With the additional measures in the MAG plan (including additional traffic light synchronization, transit improvements, and bicycle and pedestrian facility improvements), the overall TCM program is strengthened and goes beyond the existing program. See EPA TSD, Table TCM–3 in section ''Implementation of BACM and MSM for On-Road Motor Vehicle Exhaust and Paved Road Dust (TCMs).'' Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned justification for the rejection.

All the adopted TCM BACM are already implemented or have on-going implementation schedules because they are part of a on-going capital improvement program (*e.g.,* signal synchronization).

We propose to find that the combination of on-road motor vehicle technology controls (described in the previous section) and TCMs in the MAG plan provides for the implementation of RACM and BACM and inclusion of MSM for on-road motor vehicle exhaust. We also propose to find that the combination of TCMs and paved road dust measures (described in the paved road section later in this preamble) provides for the implementation of RACM and BACM and the inclusion of MSM for paved road dust.

*c. Nonroad engines.* The non-road engine category covers a diverse collection of engines, equipment and vehicles fueled by gasoline, diesel, electric, natural gas, and other alternative fuels, including outdoor power equipment, recreational equipment, farm equipment, construction equipment, lawn and garden equipment, and marine vessels.

The suggested measures for controlling emissions from nonroad engines fall into one of four categories: new emission standards, programs to accelerate fleet turnover, programs affecting usage, or fuels. In total, the MAG plan evaluates 8 measures in addition to clean fuels measures for reducing PM–10 emissions from nonroad engines. We believe that this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential measures for nonroad engines including the potentially most stringent measures from other States.

We have adopted national emission standards for a broad range of nonroad engines. These standards apply to nonroad engines sold in Arizona and are the base, RACM-level, program for controlling emissions from nonroad engines. The CAA preempts all states, except for California, from setting independent nonroad emission standards. CAA section 209(e). Other states, however, may adopt regulations identical to California's regulations, provided they notify us and give appropriate lead time, 2 years, for implementation. Section 209(e)(2)(B).

Arizona has committed to adopt California's non-road standards that are more stringent than the federal standards. MAG plan, p. 7–42. In addition, the State has established and is currently running a voluntary retirement program for gasoline powered lawn and garden equipment which is run by Maricopa County and a program to encourage the use of temporary electrical power rather than portable generators at construction sites. See MAG plan, pp. 7–41 and 7–43.

With the addition of these measures, the overall nonroad engine program is strengthened and goes beyond the existing federal program. See EPA TSD section ''Implementation of BACM and Inclusion of MSM for Nonroad Engines.'' Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned justification for the rejection.

The MAG plan identifies CARB diesel as a potential MSM for non-road engines but does not adopt it. MAG plan, Table 10–7. Under our proposed policy for MSM in extension requests, we believe that we can find that the MAG plan provides for the inclusion of MSM to our satisfaction absent the adoption of CARB diesel because, based on information in the MAG plan, the non-road engine category's contribution to nonattainment in the Phoenix area is relatively low compared to other PM–10 dust sources and implementation of CARB diesel would not advance the attainment date.

The nonroad motor vehicle category contributes 4.8 percent of the pre-control inventory in 2006, compared to construction dust at 43.8 percent, paved road dust at 20.4 percent, unpaved road dust at 13.1 percent, and windblown dust at 8.7 percent. MAG plan, Table 8–3. Adoption of CARB diesel would generate a total reduction of 0.8 mtpd in 2006. MAG plan, p. 10–37. It takes a 4 mtpd reduction to advance the annual standard attainment date one year (the minimum needed because it is an annual standard), so reductions from implementation of this measure are insufficient to advance the attainment date. See section on RFP and Quantitative Milestones.

We, therefore, propose to find that MAG plan provides for the implementation of RACM and BACM and inclusion of MSM for on-road motor vehicle exhaust.

*d. Paved road dust.* Paved road dust is the largest source of PM–10 in the Maricopa area. It is fugitive dust that is deposited on a paved roadway and then is re-entrained into the air by the action of tires grinding on the roadway. Dust is deposited on the roadway from being blown onto the road from disturbed areas; tracked onto the road from unpaved shoulders, unpaved roads, or other unpaved access points; stirred up from unpaved shoulders by wind currents created from traffic movement; spilled onto the road by haul trucks; and carried onto the road by water runoff or erosion.

The suggested measures for controlling emissions from paved road dust fall into one of three categories: reductions in vehicle trips (VT) and vehicle miles traveled (VMT), preventing deposition of material onto a roadway and cleaning material off the roadway. We have already discussed measures for reducing VT and VMT in the section on TCMs above.

The MAG plan lists several potential BACM for paved road dust. It also lists a number of potentially MSM from other areas. We believe these lists are complete and propose to find that the MAG plan evaluates a comprehensive set of potential controls for paved road dust including the potentially MSM from other States.

Prior to the MAG plan, the cities and towns in the Phoenix area and Maricopa County implemented a number of measures addressing paved road dust. See MAG plan, Table 10–5. With the additional measures in the MAG plan (described below), the overall control program to reduce paved road dust is both strengthened and expanded beyond the existing program. See EPA TSD section ''Implementation of BACM

[12] These plans include the MAG moderate and serious area carbon monoxide plans and MAG moderate area ozone plan.

and Inclusion of MSM for Paved Road Dust.'' Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013.

For the potential MSM, the MAG plan shows that these measures are either adopted or are not in fact more stringent than existing Phoenix area programs.

With the exception of the MSM for PM–10-efficient street sweepers described below, all the adopted BACM for paved roads are already implemented or have on-going implementation schedules because they are part of a on-going capital improvement program (*e.g.,* curbing). For the reasons discussed below, we propose to find that the MAG plan provides for the implementation of the PM-10 efficient street sweeper measures as expeditiously as practicable, consistent with our proposed MSM policy.

We, therefore, propose to find that the MAG plan provides for the implementation of RACM and BACM and for the inclusion of MSM for paved road dust.

*Preventing deposition of material onto a roadway.* Measures aimed at preventing track out on a paved road include treating unpaved access points, preventing track out from construction/industrial sites, treating shoulders on paved roads, controlling emissions during material transport (*e.g.,* truck covers, freeboard requirements), and preventing erosion onto paved roads.

The MAG plan includes each of these measures:

Unpaved access points: In the MAG moderate area plan, local jurisdictions focused on requiring new connections to public paved streets to be paved. MAG plan, p. 9–74. In the serious area plan, the focus has shifted to addressing existing unpaved access points in addition to preventing new unpaved access points while maintaining the previous programs. Most public entities committed to stabilize unpaved access points when a connecting road is built, improved or reconstructed. See, for example, Glendale Commitment, ''Reduce Particulate Emissions from Unpaved Shoulders and Unpaved Access Points on Paved Roads.'' Some cities have made explicit commitments for stabilizing existing access points without this prerequisite, such as Gilbert and Mesa. We also anticipate that routine city/town/County road paving and stabilization projects will result in controlling a number of existing unpaved access points. These projects combined with increased enforcement of track-out restrictions and additional PM–10 efficient street sweeping efforts should reduce paved road emissions attributable to unpaved access points.

The only potential MSM that the MAG plan identifies for unpaved access points are track out control requirements for construction sites. See MAG plan, Table 10–7. We discuss these measures in the next section.

Track out. Rule 310, sections 308.2(c) and 308.3 address dirt track out from construction/industrial sites: All work sites that are five acres or larger and all work sites where 100 cubic yards of bulk materials are hauled on-site or off-site each day must control and prevent track out by installing a track out control device. All work sites must also clean up spillage or track out immediately when it extends a cumulative distance of 50 linear feet or more; where track out extends less than 50 feet, it must be cleaned up at the end of the work day.

The MAG plan identifies, as a potentially more stringent measure for track out, South Coast (Los Angeles area) Air Quality Management District's Rule 403. MAG plan, Table 10–7. The plan concludes that the two rules are reasonably similar in several respects, and where differences exist, the relative impacts on control roughly balance against each other. MSM Study, p. C–4.[13] We agree. Both rules emphasize prevention and rapid removal of track out. See EPA TSD section ''Implementation of BACM and Inclusion of MSM for Paved Roads Dust,'' Note 2.

Unpaved Road Shoulders. As with unpaved access points, the MAG plan demonstrates a shift to dealing with existing unpaved shoulders from only preventing new ones. MAG plan, Table 9–11. Maricopa County has committed to treat 100 miles of shoulders along existing paved arterial and collector roadways with high volume truck traffic by 2003, in addition to its annual capital improvement projects for paving or treating unpaved shoulders. Maricopa County commitment, 1999 revised measure 5. Other jurisdictions have also made commitments to treat shoulders.

A.R.S. 9–500.04(3) and 49–474.01(4), adopted by the State legislature in 1998, require the cities, towns and County of Maricopa to develop and implement plans to stabilize targeted unpaved roads and alleys and to stabilize unpaved shoulders on targeted arterials beginning January 1, 2000. Although this legislation does not specify how many shoulder miles to be controlled, we believe that the local jurisdictions' efforts to meet this new legislation will result in the control of unpaved shoulders where it is most needed.

Material Transport. Requirements for the control of PM–10 emissions during material transport are found in Rule 310, sections 308.1 and 308.2. When hauling material off-site onto paved public roadways, sources are required to: (1) load trucks such that the freeboard is not less than three inches; (2) prevent spillage; (3) cover trucks with a tarp or suitable enclosure; and (4) clean or cover the interior cargo compartment before leaving a site with an empty truck.

The MAG plan identifies requirements for bulk material transport in Imperial County Regulation VIII as a potential MSM. MAG plan, Table 10–7. The plan concludes that MCESD's rule is equally stringent. We agree because Rule 310's requirements for bulk material transport/hauling are essentially the same as Imperial County's requirements.

*Cleaning material off the roadway.* Measures for cleaning material off roadway are track out, erosion, and spill removal requirements and road sweeping.

The MAG plan includes each of these measures:

Material spillage, erosion, or accumulation. Rule 310, section 308.2 and 308.3 address rapid clean up of track out from construction/industrial sites. Rule 310.01, section 306 requires property owners/operators to remediate erosion-caused deposits of bulk materials onto paved surfaces. Erosion-caused deposits are to be removed within 24 hours of their identification or prior to resumption of traffic on the pavement.

The MAG plan identifies South Coast's Rule 1186 and Mojave Desert's Rule 403 as potential MSMs for material spillage, erosion, and accumulation onto roadways. MAG plan, Table 10–7. In both cases, the plan concludes that MCESD's rules are more stringent. We agree. MCESD's rules require the clean up of more incidences of spillage, etc. than does South Coast's rule. See EPA TSD, ''Implementation of BACM and Inclusion of MSM for Paved Roads,'' Note 5.

Street sweeping. Most cities/towns and the County have on-going street sweeping programs with variable sweeping frequencies. With some exceptions, public entities implementing this measure have not explicitly committed to increase their existing sweeping frequencies. Phoenix,

[13] The ''MSM Study'' is the ''Most Stringent PM–10 Control Measure Analysis,'' Sierra Research, May 13, 1998 found in Appendix C, Exhibit 4 of the MAG plan.

for example, approved a program in 1996 to increase the frequency of residential street sweeping to match the uncontained trash pick-up schedule. Phoenix commitment, measure 97-DC–5. However, sweeping frequency is appropriately evaluated in combination with other paved road measures, because the emission-reducing potential of increased sweeping frequency is closely associated with other factors. These factors include whether the sweepers currently in use are PM–10 efficient (such that the act of sweeping does not cause increased emissions) and whether the public entity has identified roads that tend to experience higher silt loadings where more frequent sweeping is likely to make an appreciable difference in PM–10 emissions. Because sweeping frequency is among the criteria included in MAG's PM–10 efficient street sweeper solicitation (see below), we believe this measure is largely incorporated into MAG's new program.

The MAG plan identifies as a MSM the PM–10 efficient street sweeping provisions in South Coast Rule 1186. MAG plan, Table 10–7. However, the plan's analysis pre-dates MAG's commitment for the purchase and distribution of PM–10 efficient street sweepers and is no longer current.

The MAG plan includes commitments by MAG, cities, towns and the County for the purchase and use of PM–10 efficient street sweepers. This commitment involves the allocation of $3.8 million in Congestion Mitigation Air Quality (CMAQ) funds for the FY 2000–2004 Transportation Improvement Program (TIP) to purchase PM–10 certified street sweepers for the local jurisdictions to use. MAG has recommended an additional $1.9 million CMAQ funds be allocated to purchase PM–10 certified street sweepers in the FY 2001–2005 TIP. See MAG commitment, ''PM–10 Efficient Street Sweepers.''

The funds allocated by MAG for this program should be sufficient to replace approximately two-thirds of the 72 existing city/town/County street sweepers.[14] Each fiscal year in which CMAQ funds are allocated for street sweepers, MAG will solicit requests for funding from cities, towns and the County in the PM–10 nonattainment area. Funding requests must identify by facility type (*i.e.* freeway, arterial/collector, local) the number of centerline miles to be swept with the PM–10 certified units, expected frequency of sweeping, and average daily traffic (if available). MAG will use this information to estimate the emissions reduction associated with each sweeper request and rank the requests in priority order of effectiveness for consideration in the allocation of CMAQ funds. See MAG commitment, ''PM–10 Efficient Street Sweepers.''

In evaluating this program, we considered not only the number of PM–10 efficient street sweepers to be purchased and distributed, but whether the program incorporates use factors that influence emissions reductions. The greatest emissions reduction benefit for this mitigative measure will be achieved if the sweepers are used on a frequent basis on roads with high silt loadings or significant visible accumulations. Each public entity has a monetary incentive to compete for the PM–10 efficient street sweepers, as the program is funded by MAG with a low cost share (5.7 percent) requirement. Also, the new street sweepers will either replace existing city-owned street sweeping equipment or contracted out services, or be added to existing street sweeper equipment/services. MAG's selection process includes PM–10 emissions reduction potential, based on the types of roads each jurisdiction is targeting for sweeping and how frequently they will be swept. This data will assist MAG in distributing the street sweepers to local jurisdictions in a way that maximizes the regional air quality benefits of the program. Plus, when the cities/towns/County are awarded PM–10 efficient street sweepers, their submittals will incorporate use factors that maximize emission reductions from this measure.

We believe that implementation of the PM–10 efficient street sweeper program is as expeditious as practicable. The funding necessary to purchase this equipment is available only over the course of several fiscal years and the purchase of the PM–10 efficient street sweepers can only proceed at the rate these funds become available.

South Coast's Rule 1186 requires any government or government agency which contracts to acquire street sweeping equipment or services for routine street sweeping on public roads that it owns and/or maintains, where the contract date or purchase or lease date is January 1, 2000 or later, to acquire or use only certified street sweeping equipment. The rule establishes street sweeper testing and certification procedures. Unlike Maricopa's strategy, Rule 1186 requires that PM–10 efficient street sweepers be used whenever street sweeping is contracted out as of January 2000, and it requires public agencies to replace their existing street sweeping equipment with PM–10 efficient equipment by attrition.

MAG's PM–10 efficient street sweeper program is being funded over the next 4 to 5 fiscal years, which may result in a greater number of street sweepers distributed in a shorter time frame than could be expected using South Coast's natural attrition approach. While it is possible that some cities/towns in Maricopa may continue to contract out for street sweeping services where PM–10 efficient sweepers may not be used, most do not contract for street sweeping. Furthermore, due to the fact that public entities will be competing for PM–10 efficient street sweepers funded by CMAQ dollars with only a low cost share requirement, we believe that the already limited reliance on contracted out services in Maricopa County will lessen as new PM–10 efficient equipment becomes available and that contractors will switch to PM–10 efficient equipment to meet new demand. In addition, MAG's program ensures that the cities/town/County develop plans for how the street sweepers will be used to maximize their emissions reduction potential. We, therefore, believe that overall the Maricopa program is equivalent to South Coast's Rule 1186.

e. Unpaved parking lots. This category includes emissions from re-entrained road dust from vehicle traffic in unpaved parking lots and windblown dust entrained from the disturbed surface of unpaved parking lots.

There are two principle ways to control emissions from unpaved parking lots: prohibit unpaved parking lots or treat the lot. MAG plan identified both: a prohibition on unpaved haul roads and parking or staging areas and surface treatment to reduce dust from unpaved driveways and parking lots. MAG plan, Table 5–2. The MAG plan identified one potentially more stringent measure from South Coast which controls fugitive dust from parking areas on construction sites. MSM Study, p. C–9 and 10. It did not identify any potential MSM for non-construction site unpaved parking lots. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential BACM and MSM for unpaved parking lots.

Most local jurisdictions in Maricopa County identified ordinances that require paving of new parking lots. In addition, MCESD Rule 310.01 requires owners/operators of an unpaved parking lot larger than 5,000 square feet to pave, apply dust suppressants, or apply gravel, according to the applicable rule

[14] Some street sweepers may be additions to, as opposed to replacements of, existing equipment.

standards/test methods. Section 303. Applicable standards include a 20 percent opacity standard, and an 8 percent silt content standard and/or a 0.33 oz/square foot silt loading standard. Section 303.2. MCESD Rule 310 applies the same stabilization requirements to parking lots on permitted facilities. Rule 310, section 302.1. Finally, many cities/towns have treated their own parking lots or required treatment of private lots below MCESD's thresholds.

In determining whether the MAG plan provides for the implementation of BACM for unpaved parking lots, we are also specifically considering whether the plan provides for the implementation of RACM for these sources.[15] In our FIP, we promulgated a RACM fugitive dust rule applicable to unpaved parking lots in the Phoenix PM–10 nonattainment area and thus it provides a starting point for determining whether the MAG plan measures for unpaved parking lots meet RACM. It is not necessary for the MAG plan measures to be identical to the FIP rule in order to meet the CAA's RACM requirement, but only that they provide for the implementation of RACM.[16] However, if the submitted measures for a particular source are identical to the FIP rule, we can determine without further analysis that the MAG plan has provided for RACM for that source.

MCESD requirements for unpaved parking lots found in Rule 310.01, section 303 are the same in terms of source coverage and applicable standards/test methods for unpaved parking lots as the FIP rule, with the only difference being that Rule 310.01 applies county-wide while the FIP rule applies strictly to sources located in the PM–10 nonattainment area. Rule 310.01 requirements are effective upon adoption and were adopted on February 2000, such that the timeframe for controls is equivalent to the FIP rule and is also as expeditious as practicable. In light of the fact that Rule 310.01 requirements are the same as the FIP rule requirements and MCESD's commitments to improve compliance and enforcement of Rule 310.01, we propose that the MAG plan provides for the implementation of RACM. Given additional MAG plan city/town commitments that collectively increase the stringency of control on unpaved parking lots, we propose that the MAG plan also provides for the implementation of BACM.

South Coast Rule 403 requires sources to apply dust suppressants to stabilize at least 80 percent of unstabilized surface area. Sources must comply with a 0 percent opacity property line limit. The MAG plan deems the respective requirements roughly equivalent to Rule 310. We believe that the addition of a silt loading/content standard for unpaved parking lots for sources covered under Rule 310 increases the rule's stringency to be at least equivalent to that of South Coast Rule 403. We, therefore, propose to find that the MAG plan correctly concluded that there are no more stringent measures in other State plans or used in practice elsewhere that are applicable to the Phoenix area.

*f. Disturbed vacant lands.* This category includes windblown fugitive dust emissions from disturbed surfaces of vacant lands. On vacant land, fugitive dust emissions are caused by virtually any activity which disturbs an otherwise naturally stable parcel of land, including earth-moving activities, material dumping, weed abatement, and vehicle traffic. 63 FR 15919, 15937 (April 1, 1998).

The MAG plan includes three suggested measures for controlling fugitive dust from vacant disturbed lands. The plan also identified controls on weed abatement operations and off-road racing as potential most stringent measures. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential BACM and MSM for disturbed vacant lands.

The MAG plan includes two MCESD rules that address BACM for vacant lots. Rule 310 requirements apply to vacant lots located at permitted facilities (including construction sites) and Rule 310.01 requirements apply to nonpermitted sources.[17] Rule 310 and Rule 310.01 requirements apply to both publicly and privately owned lots. Rule 310, section 302.3 and Rule 310.01, section 301 and 302.

In determining whether the MAG plan provides for the implementation of BACM for disturbed vacant land, we are also specifically considering whether the Plan provides for the implementation of RACM for these sources. See Footnote 15. In our FIP, we promulgated a RACM fugitive dust rule applicable to disturbed vacant land in the Phoenix PM–10 nonattainment area and thus it provides a starting point for determining whether the MAG plan measures for disturbed vacant lands meet RACM. It is not necessary for the MAG plan measures to be identical to the FIP rule in order to meet the CAA's RACM requirement, but only that they provide for implementation of RACM. See footnote 16. However, if the submitted measures for a particular source are identical to the FIP rule, we can determine without further analysis that the MAG plan has provided for RACM for that source.

Rule 310.01 requirements for vacant lots and open areas are virtually identical to the Phoenix FIP rule's requirements for these sources. Rule 310.01, however, is more broadly applicable. It covers vacant lots and open areas located anywhere in Maricopa County, in contrast to the Phoenix FIP rule, which only applies to lots in the Maricopa County portion of PM–10 nonattainment area (located in the eastern third of the County). Rule 310.01, sections 301 and 302. Unlike the FIP rule, Rule 310.01 also applies to partially developed residential, industrial, institutional, governmental, or commercial lots in Maricopa County, and any tract of land in the Maricopa County portion of the nonattainment area adjoining agricultural property. Rule 310.01, section 211.

Rule 310 requirements for vacant lots and open areas on permitted sources are more stringent than those in Rule 310.01, in that Rule 310 requires stabilization of all inactive disturbed surface areas on permitted facilities, regardless of their size. Rule 310, section 302.3. Rule 310 also contains requirements for weed abatement that closely resembles the Phoenix FIP rule's weed abatement requirements, except

[15] While a serious area PM–10 plan must provide for both the implementation of RACM and BACM, in determining whether such a plan provides for BACM implementation, we do not normally conduct a separate evaluation to determine if the measures also meet the RACM requirements of the CAA as interpreted by EPA in its General Preamble. See 57 FR 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement, as generally subsuming the RACM requirement (i.e. if we determine that the measures are indeed the ''best available,'' we have necessarily concluded that they are ''reasonably available''). See Addendum at 42012–42014. Therefore, a separate analysis to determine if the measures also represent a RACM level of control is not necessary. However, in this particular case, we are proposing to withdraw the FIP rule in conjunction with our proposed approval of the MAG plan. In order to do this, we must determine under CAA section 110(l), that, among other things, withdrawing the FIP rule does not interfere with the RACM requirements in the CAA.

[16] The State may submit one or more control measures that collectively achieve a RACM level of control for a particular source, regardless of whether they apply the same strategy as our FIP rule. Furthermore, EPA's guidance indicates that a RACM evaluation includes considering ''the impact of the reasonableness of the measures on the municipal or other governmental entity that must bear the responsibility for their implementation.'' General Preamble at 13541.

[17] Permitted sources include any facility permitted by MCESD and are not limited solely to those facilities with earthmoving permits. Rule 310, section 102.

that Rule 310's threshold for coverage is more stringent.[18]

Vacant lots and open areas subject to Rule 310 and Rule 310.01 are required to meet the same surface stabilization standards/test methods as required in the Phoenix FIP rule.

In addition to requirements in Rule 310 and Rule 310.01, the MAG plan contains commitments made by several cities and towns to address vacant disturbed lots. For example, seven jurisdictions require or will require stabilization of disturbed vacant lots after 15 days of inactivity (as compared to Rule 310.01's 60-day compliance period); two (2) prohibit dumping of materials on vacant land; and two (2) will stabilize all city-owned vacant lots.

Because Rules 310 and 310.01 requirements are at least as stringent as the FIP rule requirements and MCESD has committed to improve compliance and enforcement of these rules, we propose that the MAG plan provides for the implementation of RACM on disturbed vacant land. Because these rules increase the number of lots subject to control thus collectively increasing the stringency of control on vacant disturbed lands, we propose that the MAG plan also provides for the implementation of BACM.

For its MSM comparison, the MAG plan identifies measures in Clark County (Las Vegas, Nevada) Rule 41 and South Coast Rule 403. See MSM Study, pp. C–11 and C–16,17. The plan concludes that neither measure is more stringent than the Maricopa measures because Rule 310 and 310.01 contain similar, equally, or more stringent requirements. We agree that the MCESD's rules are equally or more stringent.

We, therefore, propose to find that the MAG plan correctly concluded that there are no more stringent measures in other State plans or used in practice elsewhere that are applicable to the Phoenix area.

*g. Unpaved roads.* This category includes re-entrained dust from vehicle travel on unpaved roads. There are three classes of unpaved roads in the Maricopa nonattainment area: public roads, private roads that are publicly maintained (also referred to as minimally-maintained or courtesy grade), and private roads that are privately maintained.

The MAG plan includes three suggested measures for controlling fugitive dust from unpaved roads: Surface treatment to reduce dust from unpaved roads and alleys, traffic reduction/speed control plans for unpaved roads; and prohibition of unpaved haul roads. MAG plan, Table 5–2. The MAG plan did not identify any other State's measures that are more stringent than the ones already in the plan. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential BACM and MSM for unpaved roads.

In determining whether the MAG plan provides for the implementation of BACM for unpaved roads, we are also considering whether the Plan provides for the implementation of RACM for these sources. See Footnote 15. In our FIP, we promulgated a RACM fugitive dust rule applicable to unpaved roads in the Phoenix PM–10 nonattainment area and thus it provides a starting point for determining whether the MAG plan measures for unpaved roads meet RACM. It is not necessary for the MAG plan measures to be identical to the FIP rule in order to meet the CAA's RACM requirement, but only that they provide for implementation of RACM. See footnote 16. However, if the submitted measures for a particular source are identical to the FIP rule, we can determine without further analysis that the MAG plan has provided for RACM for that source.

As discussed below, we propose to find that the MAG plan provides for the implementation of RACM and BACM and the inclusion of MSM for unpaved roads.

Surface treatment to reduce dust from unpaved roads and alleys. The principle control for public unpaved roads and alleys is Rule 310.01, section 304, which requires all publicly-owned unpaved roads and alleys with 250 vehicles per day or more to be stabilized by June 10, 2000 and those with 150 vehicles per day or more to be stabilized by June 10, 2004.

Several cities have commitments that go beyond the requirements of Rule 310.01 for publicly-owned unpaved roads. For example, the City of Phoenix committed to, and recently accomplished, paving all 80 miles of its publicly-owned unpaved roads regardless of the level of vehicle travel. Phoenix Commitment, Measure 98–DC–7. Other cities, such as Tempe and Gilbert, have very few remaining miles of public unpaved roads/alleys. See Tempe Commitments, Measure 98–DC–7 and Gilbert Commitments, Measure 98–DC–7.

For private roads, Rule 310, section 308.6, requires that easements, rights-of-way, and access roads for utilities (electricity, natural gas, oil, water, and gas transmission) that receive 150 or more VPD must be paved, chemically stabilized, or graveled in compliance with the rule's standards.

Private unpaved roads are scattered throughout Maricopa County, within both County and city jurisdictions. A survey performed for us of unpaved roads in Maricopa County determined that the great majority of identified unpaved road mileage consists of privately-owned roads that receive minimal maintenance by the Maricopa County Department of Transportation (MCDOT).[19]

MAG and MCDOT have committed to pave County minimal maintenance roads within the nonattainment area that currently exceed 150 ADT and meet criteria to become public highways, using $22 million from Congestion Management/Air Quality and MCDOT funds.[20] MAG Commitment; Maricopa County Commitment, 1999 Revised Measure 17. This program will pave an estimated 60 miles of unpaved roadways in fiscal years 2001–2003 which is approximately 20 percent of the privately-owned, publicly-maintained County-jurisdiction roads and 40 percent of vehicle miles traveled on these roads. Maricopa County has also committed to continue to evaluate other roads for funding when traffic levels increase above 150 vehicle trips per day. Maricopa County Commitment, 1999 Revised Measure 17. We interpret this commitment to apply to any private roads within County jurisdiction, whether they currently receive minimal maintenance or not.

As the County evaluates roads for paving, it may make exceptions to its commitment to pave roads with vehicle trips that exceed 150 ADT. The County's evaluation process takes into account whether a road meets the proper criteria to become a public highway and whether estimated costs of paving are excessive (greater than $500,000 per mile).[21] When MCDOT identifies a road that meets these criteria (i.e. the road can be declared a public highway and

[18] Rule 310 requires any earthmoving operation that disturbs 0.1 acre or more to have a dust control plan, including weed abatement by discing or blading, whereas the Phoenix FIP rule weed abatement requirements only apply to disturbances equal to or greater than 0.5 acres. Rule 310, section 303.

[19] Pacific Environmental Services, ''Survey for Fugitive Dust Emission Sources,'' April 15, 1999.

[20] Congestion Management/Air Quality (CMAQ) funds are federal transportation funds awarded to certain nonattainment areas for congestion management or air quality-transportation projects such as paving unpaved roads.

[21] A private road begins to bear other than local traffic through extensions of other nearby public roads or the construction of an indirect source that attracts external drivers using the road as a short cut. See Maricopa County Commitments, 1999 Revised Measure 17.

costs are not excessive), it will recommend that the Board of Supervisors open and declare the road a public highway.

Because BACM implementation properly takes costs into account, we believe that MCDOT's criteria for selecting private roads to pave are suitable in the context of a strategy to implement BACM and will result in control of the great majority of high traffic unpaved roads. Although available information on private roads in city jurisdictions is limited, our existing information suggests that a typical privately owned unpaved road has low ADT.[22] As a result, we believe that the vast majority of private unpaved roads do not need to be controlled in order for us to determine that the MAG plan provides for the implementation of BACM for unpaved roads for the annual standard.

Traffic reduction/speed control plans for unpaved roads. Some jurisdictions committed to evaluate this measure. Two jurisdictions committed to posting 15 mph speed limit signs on private and public unpaved roads and access ways; one jurisdiction has posted 15 mph speed limits in all alleys. See MAG plan, Table 10–9. Also, under Rule 310, owners/operators of unpaved haul roads and utility roads who comply with the rule by limiting vehicle trips to 20 per day, must also limit vehicle speeds to 15 mph. While speed limit controls are only being implemented to a limited extent, we believe the plan measures to pave or otherwise stabilize unpaved roads in the Phoenix PM–10 nonattainment area establish the critical commitments for the implementation of RACM and BACM. This is because road stabilization ensures emission reductions whereas speed limits may or may not be observed.

Prohibition of unpaved haul roads. Rule 310 requires that unpaved haul roads meet both a 20 percent opacity standard and a silt content or silt loading standard. Rule 310, section 302.2. We propose to find that this requirement is sufficient for the implementation of BACM for these roads. We believe requiring compliance with both of these standards ensures that the BACM applied will have a stabilizing effect.

Evaluation of unpaved road measures in other areas found none that are more stringent than the measures for unpaved roads in the MAG plan. MAG plan, Table 10–7. We agree and propose to find that there are no other more stringent measures for unpaved roads than are already included in the MAG plan.

Please see the TSD section ''Implementation of BACM and Inclusion of MSM for Unpaved Roads'' for a more detailed discussion of our proposed findings.

*h. Construction sites and activities.* Sources of fugitive dust emissions at construction site sources include land clearing, earthmoving, excavating, construction, demolition, material handling, bulk material storage and/or transporting operations, material track out or spillage onto paved roads (which we have addressed in the paved road section), and vehicle use and movement on site (e.g., the operation of any equipment on unpaved surfaces, unpaved roads and unpaved parking areas). Windblown emissions from disturbed areas on construction sites are also a source of PM–10. Construction operations, which are mostly various forms of earthmoving, represent some 90 percent of the emissions in this source category.

The suggested measures in the MAG plan are actually various means of improving compliance with controls as opposed to new controls for construction sites. The controls for construction sites are found in MCESD's fugitive dust rule, Rule 310, revised on February 16, 2000.

Rule 310's requirements, effective on February 16, 2000, apply to any source required to obtain a permit under Maricopa County rules, which includes earthmoving operations of 0.10 acre or more and sources subject to Title V permits,[23] Non-Title V permits, or General Permits. In addition to rule requirements for fugitive dust sources located at any permitted source, Rule 310 requires that a Dust Control Plan (DCP) be submitted for any earthmoving operations of 0.10 acre or more, and that the DCP be approved prior to commencing any dust generating operation. The rule's definition of a dust generating operation includes any activity capable of generating fugitive dust including land clearing, earthmoving, weed abatement by discing or blading, excavating, construction, demolition, material handling, storage and/or transporting operations, vehicle use and movement, the operation of any outdoor equipment or unpaved parking lots. For other permitted sources, Rule 310 requires that a Dust Control Plan (DCP) be submitted and approved prior to commencing any routine dust generating activity, defined as any dust generating operation which occurs more than 4 times per year or lasts 30 cumulative days or more per year.[24]

Specific Rule 310 requirements include:

- a 20 percent opacity requirement for any dust generating operation
- wind event control measures
- implementation of control measures before, after and while conducting any dust generating operation, including weekends, after work hours and holidays
- required control measures and standards for:
- unpaved parking lots
- unpaved haul/access roads
- disturbed open areas and vacant lots
- bulk material hauling
- bulk material spillage, carry-out, erosion and track out
- open storage piles
- weed abatement by blading or discing a requirement in dust control plans for at least one primary and one contingency control measure for all fugitive dust sources; the contingency measure is to be immediately implemented if the primary control measure proves ineffective

In order to comply with the rule's 20 percent opacity standard and dust control plan requirements for implementing primary and/or contingency control measures for earthmoving activities,[25] sources need to apply one or more controls, which in most cases includes applying water or another dust suppressant before and during operations. Inactive disturbed surfaces must be stabilized to meet at least one of the rule's stabilization standards (*e.g.* visible crusting, 10 percent rock cover, etc.). Unpaved roads and unpaved parking lots must also be stabilized to meet both a 20 percent opacity standard and a silt content/loading standard.[26] Test methods associated with stabilization and

[22] Among the over 100 segments of unpaved privately-owned and maintained roads that were identified in the PES survey, the contractor estimated, using aerial photographs, that only 6 of these have ADTs that exceed 150. Tube counts, which are more accurate than other methods to estimate ADT, were not conducted on these roads.

[23] Title V permits are operating permits required by Title V of the Clean Air Act for major stationary sources and certain other stationary sources.

[24] This is in addition to the requirement to submit a DCP for any earthmoving operation that disturbs 0.10 acre or more even if the operation is subject to Title V or other permitting requirements.

[25] Earthmoving operations include cutting and filling, grading, leveling, excavating, trenching, loading or unloading of bulk materials, demolishing, blasting, drilling, adding to or removing bulk materials from open storage piles, back filling, soil mulching, landfill operations, or weed abatement by discing or blading.

[26] Unpaved roads must meet a 6 percent silt content standard or, alternatively, a 0.33 oz/ft$^2$ silt loading standard, while unpaved parking lots must meet an 8 percent silt content standard or, alternatively, a 0.33 oz/ft$^2$ silt loading standard.

opacity standards are contained in Appendix C, which was submitted with Rule 310.

The February 2000 revisions to Rule 310 that have increased the rule's stringency include the addition of specific work practice standards, the addition of stabilization standards and test methods for unpaved surfaces, and modifications to the opacity test method (adding an alternative opacity test method for unpaved roads and unpaved parking lots and modifying the opacity test method for other sources). We believe that the new and/or revised standards/test methods provide for a greater degree of control than under the previous SIP-approved version of Rule 310.

In addition to these Rule 310 revisions, MCESD has made three enforceable commitments to further strengthen requirements for construction sites that must be met by July 2001. These commitments, which all are part of Revised Measure 6 in Maricopa County's commitments, are to:
1. Research and develop a standard(s) and test method(s) for earthmoving sources, considering our field research, that are enforceable and meet BACM requirements on stringency and source coverage.

Currently, activities on construction sites must meet an opacity standard of 20 percent. If research on the standards and test methods find problems with the existing opacity standard's enforceability, feasibility, or stringency for some or all earthmoving operations, MCESD will revise the rule to modify the existing opacity test method to address the problems as warranted or adopt a new standard(s) and test method(s) to deal with any problems that cannot be addressed by modifying the opacity test method;

2. Research, develop and incorporate additional requirements for dust suppression practices/equipment for construction activities into dust control plans and/or Rule 310;

3. Revise the sample daily recordkeeping logs for new and renewed Rule 310 permits to be consistent with rule revisions and to provide sufficient detail documenting the implementation of dust control measures required by Rule 310 and the dust control plan. Distribute sample log sheets with issued permits and conduct outreach to sources.

The first enforceable commitment addresses our concern that the existing opacity standard and test method for earthmoving operations may not always be sufficient to control construction site dust to BACM levels. MCESD has already revised the opacity test method to deal partially with this concern (see Rule 310, Appendix C), but we believe that additional standards/test methods are needed to fully assure that sources are effectively controlled. We have already sponsored a field study to address this issue and are considering additional field work in Summer, 2000. We believe that additional time is needed for Maricopa County to investigate options in coordination with us, and then revise the rule. Therefore, a commitment is the appropriate method of addressing this issue.

The second enforceable commitment addresses our concern that dust control plans (DCPs) lack specific criteria for dust suppressant application. For example, a source engaged in grading or cut-and-fill earthmoving for a multi-acre project may choose to comply with Rule 310 by applying water. However, neither the rule nor DCPs establishes minimum criteria for the number of water trucks/water application systems and water truck capacity for any given size construction site or a ratio of earthmoving equipment to water trucks. The rule also does not contain a pre-wetting requirement, although research may show this to be necessary to successfully control dust on certain soil types.

Establishing criteria for dust control is complicated by variations in soils, meteorological conditions, equipment size/use, project phase, and level of activity. All these factors can impact the amount of water (or other controls) needed to control fugitive dust on a particular site on a particular day, making it difficult to establish criteria that apply to all sites at all times. This explains why more time is needed for MCESD to develop criteria to address a multitude of circumstances.

The third enforceable commitment addresses our concern that while Rule 310 currently contains an acceptable recordkeeping requirement, a more specific recordkeeping requirement would help improve compliance. Currently neither the rule nor DCPs specify what information should be included in a daily log. MCESD has committed to revising and distributing to permitted sources daily recordkeeping log sheets to provide sufficient detail documenting the implementation of dust control measures.

Based on our evaluation of revised Rule 310 and the additional commitments made by MCESD, we propose to find that the rule and commitments together include a comprehensive set of BACM level controls for construction sites. The rule is comprehensive in scope in that each dust source is subject to a set of requirements under Rule 310 (*e.g.* storage piles, dirt trackout, haul truck loads, disturbed areas, earthmoving operations). In addition, the Rule 310 requirements are sufficiently stringent to provide for the implementation of RACM and BACM, with the exception of certain aspects of the rule that are addressed in the commitments made by MCESD. Thus, between the submitted rule requirements and commitments, we propose to find that the MAG Plan meets the CAA's RACM and BACM requirements for construction sites.

The MAG plan identifies potentially more stringent construction site fugitive dust measures either in or under consideration for inclusion in others SIP. See MSM Study, Table 1–2 and Table 3–1.

Most of the potential MSMs are provisions in South Coast fugitive dust rule, Rule 403. The MAG plan indicates that each of the South Coast and MCESD's rules are more stringent than the other in certain respects. MAG plan, p. 10–35. The MAG plan acknowledges that Rule 403 contains more stringent control measure requirements than those imposed by Rule 310. For example, Rule 403 requires that water be applied to soil not more than 15 minutes prior to moving the soil and requires open storage piles to be watered twice per hour or covered. However, the MAG plan indicates that Rule 310's 20 percent opacity limit is generally more restrictive than Rule 403's property line standard because a 20 percent opacity fugitive dust plume typically disperses to zero visibility within 50 feet downwind of a source. MSM Study, p. C–12. The MAG plan concludes that, on balance, Rule 310 is equally stringent compared to Rule 403's construction site requirements. We agree with this conclusion with the caveat that we believe Rule 310 and/or dust control plans require additional control measures for dust suppression. This caveat is addressed in the MAG plan's commitment to research, develop and incorporate additional requirements for dust suppression practices/equipment for construction activities into dust control plans and/or Rule 310.

The MAG plan does not discuss any construction site measures from other areas as potentially more stringent measures. Based on our work with the Las Vegas area, we have identified requirements in Clark County Health District permits that are potentially more stringent than Maricopa County's

measures.[27] These requirements include stand tanks on projects that are 10 acres or more in size, an additional, separate water truck when using a trencher or when screening, a separate water truck or pull during landscaping, maintaining all stockpiles in a moist condition, *etc.*

We propose to find that Rule 310's existing provisions and Maricopa County's second enforceable commitment to research, develop and incorporate additional requirements for dust suppression practices/equipment into Rule 310 and/or DCPs are consistent with Clark County's requirements.

We have also identified a requirement in Imperial County Regulation VIII that is potentially more stringent than Maricopa County's measures. Imperial County Regulation VIII requires that water be applied 15 minutes prior to handling or transferring bulk material, chemical/physical stabilization, or sheltering/enclosure of the operation and transfer line. We propose to find that Maricopa County's second enforceable commitment to research, develop and incorporate additional requirements for dust suppression practices/equipment into Rule 310 and/or DCPs is consistent with Imperial County's requirements.

For these reasons, we propose to find that the MAG plan provides for the inclusion of the MSM applicable to the Phoenix area for construction sites and activities.

*i. Agricultural sources.* The agriculture source category covers all dust generating activities and sources on farms and ranches in the Maricopa nonattainment area. These activities and sources include land planning, tilling, harvesting, fallow fields, prepared fields, field aprons, and unpaved roads.

Maricopa County is rapidly urbanizing with agricultural land being converted into other uses at a rate of approximately 6,000 acres per year. Cathy Arthur, MAG, December, 1997. Despite the conversion of agricultural lands to other uses, agricultural sources are expected to continue to contribute to PM–10 emissions for the foreseeable future, especially in relation to the PM–10 24-hour standard.

The MAG plan identifies a number of potential BACM for agricultural sources. MAG plan, pp. 5–66 thru 5–72 and pp. 6–12 through 6–13.

In 1998, Arizona passed legislation establishing an Agricultural Best Management Practices (BMP) committee for the purpose of adopting by rule by June 10, 2000, an agricultural general permit specifying BMPs for regulated agricultural activities to reduce PM–10 emissions in the Maricopa PM–10 nonattainment area. The Committee also is required to adopt and implement an education program by June 10, 2000, and affected agricultural sources are required to implement at least one BMP by December 31, 2001. A.R.S. 49–457.A–H, M. On June 29, 1999, we approved this legislation as a SIP revision meeting the requirement for the implementation of RACM in 189(a)(1)(C) and at the same time withdrew our commitment to adopt RACM controls for agricultural that we included in the 1998 PM–10 FIP. 64 FR 34726.

The MAG plan relies on the State's commitment in A.R.S. 49–457 to adopt and implement BMPs to meet the requirement to provide for the implementation of BACM for agricultural sources. MAG plan, p. 7–156 and Letter from ADEQ to EPA, September, 1998, submitting the commitment as a SIP revision. The plan also relies on the statutory commitment to meet the MSM requirement in CAA section 188(e). MAG plan, p.10–25.

Arizona's statutory BMP commitment is similar to the commitment we made in our 1998 PM–10 FIP. 63 FR 41326 (August 3, 1998). As part of the RACM demonstration in the FIP, we promulgated a commitment, codified at 40 CFR 52.127, to ensure that RACM for agricultural sources will be expeditiously adopted and implemented. For agricultural sources, the State is using a similar strategy to address the RACM, BACM and MSM requirements.

We propose to find that the State's commitment to adopt and implement agricultural BMPs adequately addresses requirement to implement BACM and include MSM. The potential BACM explicitly identified in the MAG plan will be considered during the BMP development process.

We have, beginning with the proposed rulemaking for our 1998 PM–10 FIP and culminating in Ninth Circuit litigation on both the FIP and our SIP approval, explained at length our reasoning that a commitment to implement PM–10 controls beginning in June 2000 for agricultural fields and aprons in the Phoenix PM–10 nonattainment area rather than the immediate implementation of fully-developed regulations for those sources meets the RACM requirement in CAA section 189(a)(1)C). See 63 FR 15920, 15935–15936 (April 1, 1998); 63 FR 41332–41334; 63 FR 71817. See also Brief for Respondents in *Ober* v. *Browner,* No. 98–71158, at 43–59 (9th Cir., filed Oct. 2, 1998) (petition for review challenging EPA's FIP commitment to adopt and implement RACM for agricultural sources), and Brief for Respondents in *Ober* v. *Browner,* No. 99–71107, at 16–40 (9th Cir., filed Aug. 26, 1999) (petition for review challenging EPA's approval of the State's commitment to adopt and implement agricultural BMPs as meeting the RACM requirement of the CAA).

In the context of this proposed action, our reasoning in short is that a legally binding commitment—embodied in the State statute establishing a committee that is required to adopt a general permit specifying BMPs and identifying specific deadlines for their implementation—meets the statutory requirement in CAA section 189(b)(1)(C) since it is a ''provision to assure that best available control measures'' are implemented by a fixed deadline. While in preparing the FIP, we reviewed measures adopted by the South Coast for the control of PM–10 emissions from agricultural sources, we concluded that agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers, therefore, each PM–10 agricultural strategy is uniquely based on local circumstances. As a result, we could not, without further analysis, conclude that the South Coast controls should be immediately implemented in the Maricopa area.

Furthermore, we determined that the goal of attaining the PM–10 standards in Maricopa County with respect to agricultural sources would be best served by engaging all interested stakeholders in a joint comprehensive process on the appropriate mix of agricultural controls to implement in Maricopa County. We stated our belief that this process, despite the additional time needed to work through it, will ultimately result in the best and most cost-effective controls on agricultural sources in the County.

While A.R.S. 49–457 does not use the term ''best available control measure,'' its definition of BMPs is consistent with the criteria in EPA's guidance. ''Best management practices'' are defined in A.R.S. 49–457.N.3 as ''techniques verified by scientific research, that on a case by case basis are practical, economically feasible and effective in reducing PM–10 particulate emissions from a regulated agricultural activity.'' The broad definition of BMPs in the Arizona statute authorizes the BMP committee to adopt measures that will comply with our definition of BACM.

[27] These requirements are not in Clark County's fugitive dust rule, but rather are required practices in dust control permits.

Moreover, as noted above, the statute provides for BMP implementation that begins with an education program by June 10, 2000 and culminates in full implementation of the BMPs by December 31, 2001. [28]

Similarly, we have concluded that the definition of BMPs in the Arizona statute is broad enough to authorize the BMP committee to adopt measures that meet the level of control in the requirement to include MSM in CAA section 188(e) as we propose to interpret it in this proposed action. In reviewing measures in other SIPs and/or that have been adopted elsewhere, MAG determined that cessation of high wind tilling and soil erosion control plans were the most stringent measures available that had potential application for agricultural sources in Maricopa County. MAG plan p. 10–47. These measures are included in South Coast Rule 403 which requires PM–10 controls for all fugitive dust sources, including agricultural sources. In December 1998, South Coast adopted a set of conservation practices for agricultural sources to use to reduce fugitive dust. These practices were developed in consultation with affected stakeholder groups. See Guide to Agricultural PM–10 Dust Control Practices. The BMP task force will consider these measures during the development of the BMPs. MAG plan p. 10–47. After the BMPs and supporting technical documents are submitted to EPA, we will review them to determine if their level of control is as stringent as the South Coast rule or adequately justifies why such level would not be feasible in the Maricopa area.

As discussed elsewhere in this TSD, we propose to interpret section 188(e) to require implementation of MSM as expeditiously as practicable. For the reasons stated above, in our FIP, and in our approval of the State legislation as meeting the RACM requirements of the CAA, we conclude that the implementation schedule in the State statute meets that test. Finally, we conclude that the commitment in the State legislation meets the requirement that ''the plan *include*[s] the most stringent measures * * *.'' Emphasis added.

*j. Residential wood combustion.* The residential wood combustion (RWC) category includes emissions from the burning of solid fuel in residential fireplaces and woodstoves as well as barbecues and firepits.

Measures to control PM–10 from residential woodburning include public education program, woodburning curtailment programs, retrofit requirements and restrictions or bans on the installation of woodburning stoves and/or fireplace. In total the MAG plan list 11 potential BACM and 10 potential MSM. MAG plan Tables 5–2 and 1–7. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of residential woodburning measures.

MCESD Rule 318, Approval of Residential Woodburning Devices, establishes standards for the approval of residential woodburning devices that can be used during restricted-burn periods. Maricopa County's Residential Woodburning Restriction Ordinance provides that restricted-burn periods are declared by the Control Officer when the Control Officer determines that air pollution levels could exceed the CO standard and/or the PM standard (150 $\mu g/m^3$). We approved Rule 318 and an earlier version of the ordinance (revised April 21, 1999) as providing for the implementation of RACM. See 64 FR 60678 (November 8, 1999).

MCESD revised the ordinance on November 17, 1999 to allow the Control Officer to declare restricted-burn periods when the particulate matter pollution levels could exceed the ''particulate matter no-burn standard'' of 120 $\mu g/m^3$. In addition, A.R.S. section 9–500.16 and A.R.S. section 11–875 (1998) require cities and the County to adopt by December 31, 1998, an ordinance that prohibits the installation or construction of a fireplace or wood stove unless it is a fireplace with a permanently installed gas or electric log insert, a fireplace or wood stove that meets EPA's Phase II wood stove requirements, or a fireplace with a wood stove insert that meets EPA's Phase II stove requirements. Most jurisdictions have adopted or have committed to or indicated that State law requires them to adopt the required ordinance. See MAG Plan, pp. 7–55 to 7–64.

With these additional controls, the overall residential woodburning restriction program is strengthened and goes beyond the existing RACM-level program. Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned justification for the rejection.

The MAG plan identified a number of potential MSM for residential wood combustion. Except for the adoption of a lower threshold for calling no burn episodes, the plan does not provide for the adoption of any of these measures but provides reasoned and acceptable justifications for their rejection. Therefore, we propose to find that the MAG plan provides for the inclusion of MSM.

*k. Secondary ammonium nitrate.* Secondary ammonium nitrate is formed by a chemical reaction in the atmosphere between oxides of nitrogen ($NO_X$) and ammonia ($NH_3$). Ninety percent of $NO_X$ comes from motor vehicle exhaust (both on and off road) and 99.9 percent of $NH_3$ comes from animal wastes. See MAG plan, Table 3–1.

Two potential BACM were identified for ammonia nitrate control: Reduce emissions of ammonia and nitrates from agricultural operations and require animal waste management plans for farms/ranches with more than 50 animals. The first measure involves tilling in of manure used as fertilizer within 48 hours of application. MAG plan, Table 6–1, measure 97–AG–3. The second measure would focus on reducing ammonia emissions from livestock waste during the winter months when conditions are most conducive to ammonium nitrate formation. MAG plan, Appendix B, Exhibit 5, p. 5–70. For MSM, no measures were found that required animal waste management plans for farms or ranches and no other measures were identified. See MAG plan, Table 10–7. A large number of measures that could reduce $NO_x$ emissions were identified and have been evaluated for on-road motor vehicles and nonroad engines. We believe these list of measures is complete and propose to find that the MAG plan evaluates a comprehensive set of potential controls for ammonium nitrate.

Data from earlier studies indicate that ammonia emissions would need to be reduced by 80 percent to have an appreciable impact on ambient concentrations of ammonium nitrate. MAG plan, Appendix B, Exhibit 5, p. C–1. Essentially all ammonia emissions in the inventory are from livestock and not from the application of manure to agricultural fields. As result, controls on the application of manure are very unlikely to have any impact on PM–10 levels the Phoenix area and therefore are not technologically feasible. [29] The estimated reduction in ammonia from

[28] Of course, once adopted and submitted to EPA as a SIP revision, the individual BMPs will have to be evaluated to determine if they comply in their specifics with the BACM requirement. Here we need only determine that the Arizona statute provides sufficient authority to assure that BACM will be implemented by June 10, 2000.

[29] We consider a measure technologically feasible for an area only if it has the potential to reduce emissions in manner that reduces ambient concentrations in the area.

implementing waste management plans is 30 percent, far short of the 80 percent needed to show impact on PM–10 levels (MAG plan, Appendix B, Exhibit 5, p. 5–72), so we also believe that this measure is currently not technologically feasible.

Other than the on-road vehicle and nonroad engine categories, we do not believe that there are any other sources of $NO_x$ that should be called significant in terms of contributing to ammonium nitrate levels.

Because the MAG plan includes an extensive number of measures for controlling $NO_x$ sources and no measure are identified for the control of ammonia as technologically feasible, we propose to find that the MAG plan provides for the implementation of RACM and BACM and for the inclusion of MSM for secondary ammonium nitrates.

*l. MCESD's commitments to improve compliance and enforcement of its fugitive dust rules.* MCESD has committed to expanding and improving the compliance and enforcement program for its fugitive dust rules. These commitments are found in Maricopa County, 1999 Revised Measure 6, adopted December 15, 1999. A narrative description of the commitments and other program changes are found in Appendix IV, Exhibit 3 to the MAG plan's modeling TSD. MCESD has also committed to continuing to improve Rule 310 and Rule 310.01. These commitments are described in section F.3.g. ''Construction Sites and Activities.''

These improvements include increased public outreach and education, increased funding and staffing, increased inspection frequency, revised enforcement policies, and commitments to program evaluations and improvements. They address many of the program areas that are key to improving compliance and we believe form a solid program for increasing the effectiveness of the County's fugitive dust program.

*Staffing.* By the end of January, 2000, the inspection staff will increase to eight inspectors, 1 supervisor, 1 aide and 2 enforcement officers. By April, 2000, the County Attorney's office will hire an attorney to expedite civil litigation and to assist with prosecuting Class One Misdemeanor cases. A coordinator will be added to the Small Business Environmental Assistance Program to assist smaller builders and construction companies and to help develop and implement education programs. In total, resources devoted to the fugitive dust program will be 15 positions, a 25 percent increase over previous levels. This level of staffing is in contrast to the less than 1 staff position devoted to the program in 1996.

After reaching the committed staffing level, MCESD will review the program in March 2000 to evaluate its effectiveness and the potential need to add more staff.

*Organization.* A new enforcement section has been created under the direct supervision of the MCESD Director/Air Pollution Control Officer (APCO). This position streamlines enforcement by reducing senior management review and approval of enforcement actions and allows enforcement officers to submit directly to the APCO's desk all enforcement actions requiring APCO approval.

In addition, inspectors will be located in two new regional offices to provide quicker response times to dust-related complaints and allow more time in the field.

*Funding.* Revenue for fugitive dust program is estimated at $1.12 million from annual earth moving permit fees, a $772,000 increase over the previous level that is due to the permit fee increases adopted in 1998.

*Inspection program.* MCESD will develop by April, 2000 inspection priorities for vacant lots and unpaved parking lots that consider lot size and number of sources, with larger lots being inspected first and smaller lots in succeeding years. A number of cities have municipal programs to address these sources; therefore, the Department will initially direct its inspections to cities lacking such programs. It will also track the city plans that are required by State statute to stabilize target unpaved roads, alleys and unpaved shoulders.

MCESD has also increased inspection rates and improved procedures for permitted sources such as construction sites including:

- Proactively inspecting sites larger than 10 acres, 3 to 6 times per year and inspect smaller sites once within 30 days of project start date.
- Scheduling weekend inspections randomly once per month.
- Providing a shortened complaint response time with a goal of 8 hours for high priority complaints and maintaining the current goal of 24 hours for others.
- Revising standard operating procedures and checklists for fugitive dust inspections to be consistent with the revised rules.
- Revising inspection standard operating procedures to have inspectors check for records and inspect fugitive dust sources at permitted stationary sources.

*Enforcement program.* By April 2000, MCESD will revise it fugitive dust enforcement policy to

- include guidelines for initiating various enforcement actions
- include guidelines for reinspecting define timely and appropriate action by laying out guidelines for which type of violation is appropriate for specific enforcement actions and for the time frames for escalating enforcement actions when appropriate
- identify priority violations
- include guidelines for when to seek penalties reflecting the economic benefit of noncompliance, if feasible
- include guidelines for seeking and determining higher penalties for repeat violators
- guidelines for inspectors to handle predetermined citation categories form observation to justice court Enforcement action options include issuing an Order of Abatement, filing a Misdemeanor Complaint in Justice court, or asking the County Attorney to seek a civil penalty in Superior Court.

Inspectors will handle certain predetermined citation category violations and will be responsible for case development from observance of a violation to filing of the actual citation in the justice court. Having the inspectors handle routine cases will enable the enforcement officers to work on resolving cases involving more serious and complicated violations.

*Public outreach/education.* Public outreach and education consists of staff training, educating the regulated parties, developing good working relationships with other involved parties such as the cities, and making the program more understandable. Increased education of both inspectors and the regulated industry increases compliance.

Among the public outreach and education efforts will be:

- Inspector training on case development.
- Inspector training on revised test methods.
- City staff training on preparing inspection reports and notices of violation.
- On-going training at the local community college.
- Making information available on MCESD website.
- Distribution of information through city building departments and other sources.

*Program evaluation and tracking.* MCESD will track the number of inspections, number and type of enforcement actions, amount of penalties assessed, and amount of penalties collected. It will also conduct mid-year reviews of the program in

September, 2000 and again in March 2001 to evaluate progress and future needs.

*G. Attainment Date Extension*

1. Apply for an Extension

We interpret this requirement to mean that the State must apply in writing for an extension and that the extension request must accompany the SIP submittal containing the demonstration that the area will attain by the most expeditious alternative date practicable. The public must be provided reasonable notice and a public hearing on the request before it is submitted.

MAG, as the lead air quality planning agency for the Phoenix metropolitan area, formally requested an extension of the PM–10 nonattainment deadline to December 31, 2006 based on documentation in Chapter 10 of the MAG plan and Appendix C, Exhibit 5 of the MAG plan. MAG plan, p. 10–2. This extension request is an integral part of the MAG plan and was subject to public hearing along with the rest of the plan.

2. Demonstrate the Impracticability of Attainment by December 31, 2001

In order to demonstrate impracticability, the plan must show that the implementation of BACM (as determined by our guidance) on significant sources categories will not bring the area into attainment by December 31, 2001.

To demonstrate the impracticability of attainment by 2001, the MAG plan derived from the air quality modeling a change in PM–10 concentrations per change in emissions using the modeled concentration for the year 2006 and observed concentration for the year 1995 at Greenwood monitor and the overall change in emissions between the two years. MAG plan, p. 8–10. Using this information, the plan estimates that the annual concentration in 2001 will be 52.21 $\mu g/m^3$ after implementation of BACM. Because the projected 2001 annual concentration is still above the 50 $\mu g/m^3$ annual NAAQS, the MAG plan concluded that it was impracticable to attain by 2001.[30] MAG plan, p. 8–10.

Based on our analysis of control measures in the MAG plan as described in the preceding sections, we propose to find that the MAG plan provides for implementation of BACM as required by CAA section 189(b)(1)(C). Based on the modeling analysis in the plan, we also propose to find that the MAG plan also demonstrates that attainment by 2001 is impracticable with the implementation of BACM.

3. Complied With Commitments and Requirements in the SIP

We interpret this criterion to mean that the State has implemented the control measures in prior SIP revisions it has submitted to address the CAA requirements in sections 172 and 189 for PM–10 nonattainment areas. It does not include measures being approved in this action.

The two SIP revisions that Arizona has submitted to address PM–10 are the 1991 MAG moderate area plan and the 1997 microscale plan.

The 1991 MAG plan includes a broad range of measures to address PM–10 including controls for constructions sites, paved road, unpaved roads, unpaved parking areas, vacant lots, and woodburning. The plan also included reasonably available control technology for stationary sources and a wide range of transportation control measures. The implementation of the measures in this plan are described in the MAG plan at pp. 10–10 to 10–25. The principal controls in this plan were Rule 310 and the County woodburning ordinances. The plan also contained a large number of commitments from the local jurisdictions to various measures. Most of the measures represented ''business as usual'' actions by the jurisdictions to do infrastructure (*e.g.,* road) improvements, to implement existing building codes or take actions already underway for the carbon monoxide plan. MAG plan, pp. 10–13 through 10–24.

The 1997 Microscale plan focused on fugitive dust sources such as construction sites, vacant lots, unpaved roads, unpaved parking lots, and agriculture. The principal controls in this plan were improvements to the implementation of Rule 310 and coordination with the cities to improve fugitive dust control. Implementation of the measures in the Microscale plan are discussed in Maricopa County commitments, 1998 Revised Measure 6.

From available information in the MAG plan, we believe that the commitments and requirements in these plans have been met. We, therefore, propose to find that the State has complied with the requirements and commitments in its implementation plan.

4. Include the Most Stringent Measures

The MAG plan excluded no source categories of directly-emitted PM–10 from its MSM analysis instead simply started its evaluation of MSM by identifying candidate measures for any source category of PM–10 present in the Phoenix area. MAG plan, p. 10–25. To identify candidate MSM, MAG's contractor Sierra Research interviewed people knowledgeable about PM–10 controls, reviewed the documents used to develop the candidate list of BACM and obtained copies of current air quality control measures from most other States including both SIP and non-SIP measures. MSM Study, p. 1–2.

After a comprehensive list of candidate MSM was developed, each measure was screened against the corresponding Maricopa measure to identify those with more restrictive emission limitations, more extensive list of affected sources, fewer exemptions, and/or one or more substantive regulatory provisions not found in the Maricopa measure. The remaining MSM were grouped by source category and were either included in the plan or a reasoned justification for rejecting the measure was provided. MSM study, Table 3–1 and MAG plan, p. 10–46.

We propose to find that the MAG plan demonstrate to our satisfaction that it includes the most stringent measures that are included in the implementation plan of any State, or are achieved in practice in any State, and can be feasibly be implemented in the Phoenix area.

We have discussed identification and adoption of MSM and the rejection of any MSM for each category deemed significant for BACM earlier in this preamble. The MAG plan identifies three MSMs for categories considered de minimis in the BACM analysis. These categories are cattle feed lots, incinerators, and charbroilers.

Cattle feed lots: MCESD Rule 310.01 requires that owners/operators of commercial feedlots and/or livestock areas apply dust suppressants, apply gravel, or install shrubs and/or trees within 50 to 100 feet of animal pens. The MAG plan identifies South Coast Rule 1186 requirements for livestock operations as a potentially more stringent requirements than Rule 310.01. However, the two rules control different sources at commercial feedlots/livestock areas. South Coast Rule 1186 requires controlling unpaved roads and hay grinding at dairy and horse farms but does not address fugitive dust emissions from disturbed open areas. MCESD Rule 310.01 controls fugitive dust emissions from disturbed open areas at dairies and cattle lots, but not unpaved roads and hay grinding.

In the Maricopa County PM–10 nonattainment area, there is only one cattle feedlot and less than half the

[30] In addition the MAG plan shows that implementation of controls on the de minimis source categories would not produce enough emission reductions to show attainment in 2001. MAG plan, p. 9–11.

number of dairies compared to those subject to South Coast Rule 1186. Similar to South Coast, unpaved roads at dairies are low travel (10 to 20 ADT) and represent a very small source of emissions in the Phoenix area and controls on them would not advance the attainment date. We, therefore, believe we can find that the MAG plan provides for the implementation of MSM to our satisfaction without Rule 1186 provisions for unpaved roads at cattle feed lots. In Maricopa County, hay grinding activities occur primarily at feed mills (as opposed to dairies) which are permitted sources and thus already subject to control requirements.

Incinerators: The MAG plan identifies Clark County's Rule 26 as having a more stringent opacity limit than MCESD's Rule 313. Clark County limits opacity from existing incinerators to 5 percent while Maricopa's limit is 20 percent. MAG plan, Table 10–7. Incinerators are a very small source in the Phoenix nonattainment area. In 1994 there were 32 incinerators that together emitted 2.56 metric tons per *year* (7.1 kg per day). 1994 Regional PM–10 Inventory, p. 4–17. Because incinerators are so small a source and controls on them would not advance the attainment date, we propose to find that the MAG plan provide for the inclusion of MSM to our satisfaction without including Clark County's opacity limit for incinerators.

Charbroiling: Emissions from charbroiling and frying meat are estimated to 0.6 mtpd or 227 mtpy. 1994 Regional PM–10 Inventory, p. 4–25. This is 0.4 percent of the daily directly-emitted PM–10 inventory in 1994 and 0.4 percent of the annual inventory in 1994. MCESD has committed to develop a new rule to require existing and new chain-driven and underfired charbroilers, typically found in restaurants specializing in grilled meat products, to be equipped with emission control equipment. South Coast is developing a new rule to deal with underfired charbroilers and MCESD will wait until South Coast completes its rulemaking to adopt this measure. MCESD is projecting adoption of its rule in Spring, 2001. Maricopa County commitments, Revised Measure 23. We propose to find that implementation of this rule is expeditious. Waiting on South Coast to complete its rulemaking, which will establish control requirements for underfired charbroilers, is appropriate given that the South Coast rule when adopted will set the standard for control on these types of charbroilers.

5. Demonstrate Expeditious Attainment

For the reasons discussed below, we propose to find that the MAG plan demonstrates attainment by the earliest date practicable after December 31, 2001 as required by section 189(b)(1)(A)(ii) of the CAA. We also propose to find that the attainment demonstration relies on control measures that either are approved or are being proposed for approval and meet our SIP enforceability criteria; that the emissions estimates assigned these measures in the attainment demonstration are reasonable; and the measures are being implemented on a schedule that is as expeditious as practicable and will result in attainment by the earliest practicable date. See discussion below.

*a. Air quality modeling.* A modeled attainment demonstration for the PM–10 annual standard should first estimate the temporal and spatial distribution of PM–10 and PM–10 precursor emissions that result from the adopted control measures by the attainment date. It should then simulate the ambient air concentration of these emissions in an air quality model and show that all locations within the nonattainment area have annual average PM–10 concentrations below the level of the annual PM–10 standard of 50 μg/m3. See ''Guidelines on Air Quality Models,'' 40 CFR part 51 appendix W, section 7.2.2. and ''PM–10 SIP Development Guideline,'' EPA–450/2–86–001, June 1987.

To provide context for our evaluation of the air quality modeling in the MAG plan, we will first briefly describe the steps in developing a modeled attainment demonstration and how the MAG plan performed each step.

Step 1. A modeling base case is developed to replicate PM–10 concentrations for specific recent days by simulating the emissions and meteorology that occurred for those days, by hour and by location throughout the area being modeled (that is, the model domain). For some input parameters, alternative plausible values are tried in a diagnostic process to ensure that the model is performing in a physically reasonable way. PM–10 concentrations from the model output are compared to monitored values to evaluate the performance of the model.

The base case for the MAG plan consisted of the application of the urban airshed model with the limited chemistry module (UAM/LC) to each of 65 days during 1995. The results from modeling each of these days are then averaged together to get the modeled annual PM–10 concentration. 1995 was used as the base year because an intensive inventory and monitoring study was performed during it; the 65 days coincided with the available PM–10 24-hour average monitoring data, which are collected once every 6 days. During 1995 the peak monitored annual PM–10 concentration was 60.01 $\mu g/m^3$ at the Greenwood monitor while the model predicted a peak concentration of 75.91 $\mu g/m_3$ at a location away from the Greenwood monitor. MAG TSD, Chapter III.[31]

Step 2. After the base case model is developed, emissions are projected into the future. Projections are based on particular facilities's expansion plans, business and socioeconomic projections, and projections of the effect of changing technology and of the control measures that are already in place. The model simulation is repeated with these future emissions but with the same meteorological inputs as before. This simulation shows how a day meteorologically conducive to high PM–10 concentrations will look in the future if no new controls are implemented. The resulting modeled concentrations can be used to derive an estimate of the additional emission reductions needed to attain the air quality standard.

For the MAG plan, emissions are projected to 2006 (which MAG found to be the earliest practicable attainment year). Before additional controls, the 2006 future peak PM–10 annual average was simulated to be 86.72 $\mu g/m^3$. Because this was above the NAAQS of 50 $\mu g/m^3$, the modeling showed that additional control measures were needed. MAG plan, p. 8–6.

Step 3. The effect of control measures on ambient concentrations are simulated by changing the model emission inputs for future years to reflect higher implementation rates or larger emission reductions from additional controls. Additional measures are tried if PM–10 concentrations are still above the standards.

Attainment is demonstrated when sufficient emission reductions are in place so that modeled concentrations in every grid square are below the standard.

MAG showed that with additional controls, the peak annual PM–10 concentration in 2006 is 49.70 $\mu g/m^3$, which is below the annual PM–10 NAAQS of 50 49.70 $\mu g/m^3$, thus

[31] The MAG TSD is the ''Revised Technical Support Document for Regional PM–10 Modeling in Support of the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area,'' MAG, February 2000 found in Appendix A, Exhibit 7 of the MAG plan.

demonstrating attainment. MAG plan, p. 8–12.

In evaluating the air quality modeling in the MAG plan, we reviewed the choice of models; the selection of episodes to model, the selection of the modeling domain and grid resolution, the methods of preparing wind, temperature, and mixing height fields data; the selected initial and boundary conditions values; the modeling emission inventories; the procedures for and results of quality assurance, diagnostic testing and sensitivity testing; and selected modeling performance goals and model results vis a vis these goals. We have found them all generally acceptable. See our detailed evaluation in EPA TSD section ''Demonstrate Attainment by the Most Expeditious Alternative Date Practicable after December 31, 2001.''

The modeling performed for the MAG plan is as sophisticated as any that has been performed for a PM–10 SIP. While there are several problems associated with the model's performance for secondary particulates and several other shortcomings of the modeling and its documentation, the dominance of the contribution of primary particulates from fugitive dust to PM–10 concentrations in the Phoenix area obviates these concerns. At worst the MAG plan's modeling is akin to modified rollback, an approach that is acceptable under EPA modeling guidance for PM–10. We therefore propose to approve the modeling for the annual NAAQS because it provides a credible demonstration that the credited control measures will provide for attainment of the annual standard by 2006.

*b. Control measures relied on for attainment.* For demonstrating attainment, the MAG plan relies on reductions in directly-emitted PM–10 from 12 measures. MAG plan, Table 8–2. We have listed each measure; the rule, commitment or state statute through which it is implemented, and its emission reductions in Table 1–1.

TABLE 1–1.—CONTROL MEASURES RELIED ON IN THE ATTAINMENT DEMONSTRATION

| Measure | Implementation mechanism | Emission reduction (mtpd) |
|---|---|---|
| Strengthening and Better Enforcement of Fugitive Dust Rules (Construction sites). | Rule 310 and Maricopa County Commitments, 1999 Revised Measure 6. | 60.6 |
| Unpaved roads and alleys | Rules 310 and 310.01, Maricopa County Commitments, 199 Revised Measures 6 & 17, City/Town Commitments for Unpaved Roads and Alleys. | 12.2 |
| Unpaved parking lots | Rules 310 and 310.01 and Maricopa County Commitments, 1999 Revised Measure. | 3.7 |
| Vacant disturbed lots | Rules 310 and 310.01 and Maricopa County Commitments, 1999 Revised Measure 6. | 1.8 |
| 01PM–10 efficient street sweepers (MAG) | MAG Commitment, ''PM–10 Efficient Street Sweepers'' City/Town/County Commitments for Street Sweeping. | 1.1 |
| Curbing, paving, or stabilizing shoulders on paved roads | City/Town/County Commitments for Stabilizing Shoulders | 1 |
| Curbing paving or stabilizing unpaved access points | City/Town/County Commitments for Stabilizing Unpaved Access Points. | 0.4 |
| PM–10 episode thresholds | Maricopa County Residential Woodburning Restriction Ordinance. | 0.07 |
| Restaurant charbroiler controls (Maricopa County commitment) | Maricopa County Commitment, 1999 Revised Measure 23 | 0.07 |
| Cleaner Burning Gasoline | ADEQ Regulations (already SIP approved) | 0.03 |
| Pre-1988 Heavy-Duty Diesel Vehicle Standards | A.R.S. 49–542 F.7. | 0.02 |
| Coordinate traffic signals | City/Town/County Commitments for synchronizing traffic lights. | 0.01 |

We have evaluated each of these measure to ensure that it meets our SIP enforceability criteria. These criteria ensure that the measure's compliance requirements'applicability, performance standards, compliance schedule, and monitoring methods—are clear.

We have also evaluated the emission reductions credited to each measure to ensure they are reasonable. In particular, we looked at the reduction estimates for Rules 310 and 310.01.

The MAG plan assumes an incremental increase in rule effectiveness for these rules from 66 percent in 1998 to 80 percent in 2006. MAG TSD, Appendix IV, Exhibit 1, Committed Measure 1. Rule effectiveness (RE) accounts for emission reductions lost because of noncompliance, control equipment downtime, failure to apply adequate controls, or failure to use control equipment properly. One hundred percent rule effectiveness is the ability of a regulatory program to achieve all the emission reductions that could be achieved by full compliance with the applicable regulations at all sources at all times.

We have established policies on applying rule effectiveness factors for both base year and projected year inventories of volatile organic compounds (VOC), a precursor to ozone. See General Preamble at 13503 and ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications.'' USEPA, OAQPS, EPA–452/R–94–001, January 1994, (RE Guidance). In general, we encourage states to derive local category-specific RE factors. If there are no such local RE factors, we require the use of an 80 percent effectiveness default value in VOC inventories. General Preamble at 13503.

We have not established any explicit guidance for applying RE to particulate matter sources. We know, however, that PM sources like VOC sources are not in full compliance with applicable rules at all times; therefore, some RE factor needs to be applied. For this rulemaking, we have applied the existing Agency RE guidance for VOC sources to emission reduction estimates for Rule 310 and Rule 310.01.

The items that influence compliance with a rule and thus the appropriate RE factor are the clarity of the rule, its compliance requirements and the complexity of the controls required by the rule; the source's actions; and the implementing agency's actions. See RE Guidance, pp. Table 1–1 and Appendix C.

Under our guidance, a state is allowed and required to use a 80 percent RE factor absent evidence to the contrary. General Preamble at 13503. In this case,

the evidence that we have is that compliance for Rule 310 was below this level as of early 1998. MAG, with concurrence of MCESD, assumed a 30 percent compliance rate for the Rule 310 in the 1995 base year modeling. Inspections by MCESD in early 1998 indicated that the compliance rate with the rule was 66 percent. MAG TSD, Appendix II, Exhibit 6, ''Documentation on Assumption of Rule 310 Control Efficiency and Compliance Rate.''

Over the last few years, MCESD has made substantial changes to its fugitive dust control program, many designed to improve compliance. MCESD has also committed to a number of additional changes which we have described earlier. We believe that an 80 percent rule effectiveness in 2006 is appropriate given these changes and MCESD's commitments to improve compliance with Rules 310 and 310.01. These improvements cover rule and test method revisions, increased public outreach and education, increased funding and staffing, increased inspection frequency, revised enforcement policies, and commitments to program evaluations and improvements. They address many of the program areas that are key to improving compliance.

In our TSD (in the section ''Extension Request-Demonstrate Attainment by the Most Expeditious Alternative Date Practicable after December 31, 2001''), we have compared the MCESD's fugitive dust program in 1996 to the program that will be in place by 2006 based on MCESD's commitments in the MAG plan and its actions to date. This comparison clearly shows the scope of improvements to the MCESD's fugitive dust program and supports our proposed finding that an 80 percent RE in 2006 for Rule 310 and Rule 310.01 is appropriate.[32]

Finally, we have looked at the implementation schedule for each measure to assure that the MAG plan provides for expeditious implementation. Except for paving of some unpaved roads, adoption of the charbroiler rule, heavy duty diesel standards, and the purchase and deployment of the PM–10 efficient street sweepers, all the measures relied on in the attainment demonstration are currently in effect.

However, attainment of the PM–10 annual standard in the Phoenix area depends on a high level of compliance with MCESD's fugitive dust rules. The MAG plan assumes this level increases from 66 percent in 1998 to 80 percent in 2006. MAG TSD, Appendix IV, Exhibit 1, Committed Measure 1. This level of compliance depends in turn on education of the regulated community and increased enforcement modifying source behavior. Both of these take time to effect, therefore, we believe that it is reasonable to allow a period of time to achieve a high level of compliance with these rules. We thus believe that the emission reductions are being achieved as expeditiously as practicable.

6. Other Factors That EPA may Consider

CAA section 188(e) list five additional factors that we may consider in deciding whether to grant an extension and the length of that extension.

The MAG plan provides information addressing each of the factors in Chapter 10 of the plan. We have already proposed to determine that the MAG plan provides for the implementation of RACM and BACM, includes the MSM, and attainment of the annual PM–10 standard by the earliest practicable date of December 31, 2006. In the next section, we will also propose to find that the plan provides for reasonable further progress. Nothing in the additional information presented on the five factors suggest that granting an extension of the attainment date for the Phoenix area to 2006 is inappropriate.

*a. Nature and extent of nonattainment.* Over the past 5 years, violations of the annual standard have occurred routinely at three sites (MAG plan, Table 10–11):

1. Greenwood, an urban site heavily impacted by transportation sources,

2. Chandler, an urban fringe site heavily impacted by fugitive dust sources such as construction and agriculture, and

3. Salt River, a site heavily impacted by industrial sources.

Areas similar to the first two sites can be found throughout the Phoenix nonattainment area, so we would expect that there are similarly elevated PM–10 levels throughout the Phoenix area; therefore, controls need to be uniformly implemented throughout the nonattainment area, a task that generally requires longer to achieve than implementing controls in few localized areas.

*b. Types and numbers of sources or other emitting activities.* Primary contributors to elevated PM–10 levels are fugitive dust sources including paved road dust, unpaved roads, construction activities, disturbed vacant lands, unpaved parking lots, and agricultural sources. MAG plan, p. 10–51. These sources are ubiquitous in the nonattainment area and collectively number in the thousands. (For example, MCESD issued 2500 construction permits in 1999; we mailed 50,000 letters to owners of vacant lots in the nonattainment area; there are 12,000 miles of roadway in the nonattainment area.)

*c. Population exposure to concentrations above the standard.* The MAG plan estimates population exposure to elevated levels of PM–10 (both annual and 24-hr) to be from 78,000 to 163,000 (1995 figure), p. 10–13. This population exposure is calculated using estimates of disturbed land versus population in subareas of the nonattainment area. According to this calculation, 84 percent of Maricopa's population lives in areas where 10 percent or less of the land is open. MAG plan, Table 10–13. This exposure number does not seem to include populations exposed to dust from paved and unpaved roads and therefore may underestimate overall population exposure. However, the plan does provide for implementation of RACM, BACM, and MSM on disturbed land (including construction) and paved and unpaved roads with much of the emission reductions being achieved in the first few years, all these factors will reduce population exposure as quickly as practicable.

*d. Presence and concentration of potentially toxic substances in the particulate.* The primary source of airborne cancer risk in the Maricopa area is internal combustion engine exhaust from both on- and non-road engines. This risk is from all pollutants emitted from these sources (gaseous and particulate). MAG plan, p. 10–61. The MAG plan concludes that the cancer risk in the Phoenix area is comparable to that in California cities, p. 10–61. The MAG plan and other Arizona programs (*e.g.*, cleaner burning gasoline, national emission standards for non-road engines) target emissions from on- and non-road engines.

Almost all of the PM–10 emission reductions in the out years of the MAG plan (2003 and later) are and need to be from fugitive dust sources in order to show attainment of the annual PM–10 standard and not fron on- and non-road engines; therefore, extending the attainment date does not affect the degree of public exposure to the major source of toxic risk because shortening the extension would not accelerate controls on the major source of toxic risk, on- and nonroad engines.

*e. Technological and economic feasibility of controls.* Fugitive dust sources dominate the emission inventory in the Maricopa

[32] The cities and towns in Maricopa County are also increasing their efforts to address fugitive dust sources, such as unpaved parking lots and disturbed vacant lots. These efforts also support an overall 80 percent rule effectiveness.

nonattainment area. Controls for these sources are well known (paving, wetting surfaces, etc.) and have been adopted; however, the number of sources and nature of sources make education and outreach necessary to assure full compliance with those controls. In addition, costs for paving roads, purchasing street sweepers, and other capital improvements necessary to reduce PM–10 emissions are high and necessary funds are only available over a number of years. These factors generally support a longer time frame for attainment.

7. Conclusion on Extension Request

Based on our review of the MAG plan and our proposed determination that it meets the requirements necessary for granting an extension of the attainment date under CAA section 188(e), we are proposing to grant a five-year extension of the serious attainment date for the Phoenix PM–10 serious nonattainment area from December 31, 2001 to December 31, 2006.

*H. Reasonable Further Progress (RFP) and Quantitative Milestones*

We propose to find that the MAG plan provides for RFP and meets the quantitative milestone requirements of the Act.

1. Reasonable Further Progress

The MAG plan provides for annual progress so that emissions levels in each year from 1995 to 2006 that are at or below the level needed to maintain linear progress toward attainment. It demonstrates that regional PM–10 emission levels will drop from 191 mtpd in 1995 to 130 mtpd in 2006 with two-thirds of the reduction occurring before 2001. MAG plan, Figure 8–4. Total regional emissions decrease annually at a rate of approximately 6.5 mtpd per year from 1995 through 2001 and 4.4 mtpd per year from 2002 to 2006. The assumptions that underlie the RFP demonstration regarding control measures' implementation and effectiveness are reasonable.

The plan does not provide emission reduction information for each year between the base modeling year of 1995 and the attainment year of 2006. We do not believe that this level of detail is necessary or meaningful. The principal control measures in the plan (such as improving compliance with the fugitive dust rules, progressive paving of unpaved roads, and annual replacement of part of the street sweeper fleet with PM–10 efficient units) produce year to year incremental increases in emission reductions sufficient to meet the statutory requirement for RFP. See MAG plan, Figure 8–4 and EPA TSD, Figure RFP–1. Therefore, we propose to find that the MAG plan provides for ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date'' as required by section 172(c)(2) of the Act.

2. Quantitative Milestones

Our guidance provides for a quantitative milestone for the year 2000. Addendum at 42016. Based on the statutory requirement for milestones every three years, the years 2003 and 2006 are the next two milestones for areas with an attainment date extension under section 188(e). The MAG plan provides milestones for 2003 and 2006 but substitutes 2001 for 2000. We believe this minor deviation from our guidance is appropriate and acceptable for the following reasons.

First, we set the milestone schedule in our serious PM–10 area guidance assuming the area involved was one of the initial moderate areas and its moderate area plan demonstrates attainment by December 31, 1994. General Preamble at 13539 and Addendum at 42016. Although the Phoenix area was one of the initial moderate nonattainment areas, its moderate area plan did not demonstrate attainment.[33] As a result, our guidance on the appropriate milestone years is not strictly applicable to the MAG serious area plan.

We also believe that the statutory purpose for including milestones in PM–10 plans is best served in the Phoenix area by having the milestone year be 2001 rather than 2000. Under the Act, states are to submit a demonstration 90 days after a milestone date that the state has implemented all measures in its approved plan and has met the milestone. See CAA section 189(c)(2). If a state fails to submit a report or we determine that the area has not met a milestone, then the state must submit a plan revision that assures that the next milestone will be met. See CAA section 189(c)(3).

It is clear from the statutory requirements, that the milestone requirement functions as a mid-course evaluation of the PM–10 plan and an opportunity to make corrections to the plan to assure that there is no delay in attainment due to failures to implement or achieve needed reductions. As such, the milestones should be keyed, to the extent possible, to major implementation deadlines in a manner that allows for a realistic and comprehensive look at the effectiveness of the implemented measures.

The BACM implementation deadline for Phoenix is June 10, 2000. A December 31, 2000 milestone allows for the evaluation of only a half-year of implementation, which is little time to see if implementation is going to achieve the expected emission reductions. Setting the milestone one year later on December 31, 2001 as the MAG plan does, provides for a full year of implementation allowing for a more realistic assessment of the effectiveness of BACM yet still leaving ample time to make any corrections needed to assure timely attainment. Therefore, we believe that strict adherence to the 2000 milestone date in our guidance would be less beneficial to attainment in the Phoenix area than setting the date at 2001.

The next milestone in the MAG plan after the 2001 one is in 2003. MAG plan, Figure 8–4. This second milestone is only 2 years after the first, instead of 3 years arguably required by the Act. However, we believe that the 3-year milestone increment in CAA section 189(c) is the maximum allowable time between milestones and nothing in the section prohibits states from setting milestones dates that are closer together.

The assumptions regarding control measures' implementation and effectiveness that underlie the quantitative milestones are reasonable and consistent with the RFP demonstration.

For these reasons, we propose to find that the MAG plan meets the quantitative milestone requirement in CAA section 189(c)(1).

*I. General SIP Requirements*

Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plan provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (section 51.230–232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine

[33] The moderate area plan submitted by the State in 1991 and revised in 1993 and 1994 demonstrated the impracticability of attainment by December 31, 1994. While we have subsequently disapproved this impracticability demonstration because the plan did not include RACM, we confirmed that attainment was impracticable in our 1998 FIP. 63 FR 41340.

compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

We propose to find that the implementing agencies for the MAG plan have adequate resources for implementing their respective commitments. We also propose to find that the MAG plan adequately describes the resources that are available or will be available to the State and local agencies to carry out the Plan, both now and over the next 5 years. See discussion of the individual commitments and control measures in the TSD.

All agencies and jurisdictions appear to have adequate authority under Arizona state law to implement their respected commitments and, where applicable, to obtain information necessary to determine compliance. We, therefore, propose to find that these agencies/jurisdictions have demonstrated that they have adequate legal authority to implement the MAG plan.

Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of SIP measures. The implementing regulation for this section is found at 40 CFR 51.111(a) and requires control strategies to include a description of enforcement methods including (1) procedures for monitoring compliance with each of the selected control measures, (2) procedures for handling violations, and (3) the designation of the agency responsible for enforcement.

The principle control measures in the plan are MCESD's Rules 310 and 310.01. Procedures for monitoring compliance (*i.e.,* the inspection strategy) with these rules are described in Maricopa County's commitments. See Maricopa County commitment, 1999 Revised Measure 6.

Based on the review of MCESD's enforcement procedures, we propose to find that the MAG plan adequately provides for the enforcement of the principle measures relied on for attainment and that the plan includes an adequate description of enforcement methods as required by our regulations.

Section 110(a)(2)(E)(iii) requires SIPs to include necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of the such plan provision.

We have previously found that Arizona law includes the necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of the such plan provision. 60 FR 18010, 18019 (April 10, 1995).

**Proposed Actions on Maricopa County Rules**

*A. Rule 310*

Rule 310 establishes requirements for fugitive dust sources on facilities that have or are required to have air quality permits from MCESD. These facilities include construction sites, stationary sources, and any other facility or operation that is required to have a permit under MCESD rules. The rule requires earthmoving activities that disturb 0.10 acre or more to apply for and get approval of a Dust Control Plan (DCP) and requires other permitted sources to obtain a DCP prior to commencing any routine dust generating activity. We have described many of the Rule's specific requirements earlier in this preamble.

The current SIP approved version of Rule 310 is the version adopted on September 9, 1994. We approved this version of Rule 310 into the SIP on August 4, 1997 as part of the Microscale plan. 62 FR 41856

MCESD adopted a revised version of Rule 310 and Appendix C to MCESD rules on February 16, 2000 and Arizona submitted both as a revision to the Arizona SIP on March 2, 2000. Appendix C contains the test methods relied on in Rule 310.

The revised Rule 310 is considerably different from the current SIP-approved version. The greatest change has been to split the old rule into two new rules: the revised Rule 310 that addresses permitted facilities and a new Rule 310.01 that addresses nonpermitted sources. We evaluate Rule 310.01 in the next section. MCESD also revised Rule 310 to strengthen it compared to the current SIP-approved version. These rule improvements include:

- Improved enforceability of control measures and dust control permits (DCPs),
- Improvements to existing test methods (in Appendix C),
- New performance standards and test methods,
- Clearer definitions,
- More specific work practice requirements

MCESD has also committed to continue to strengthen and improve Rule 310 through research on test methods, dust control methods, and revised recordkeeping requirements. See discussion in section F.3.g., ''Construction Sites and Activities.''

We believe that the revised Rule 310 is a considerable improvement over the SIP-approved version and, combined with MCESD commitments to continue to improve the Rule and to improve enforcement and compliance with it, provides for implementation of RACM and BACM and the inclusion of the MSM on the sources subject to it. We, therefore, propose to approve Rule 310 and Appendix C as adopted on February 16, 2000 and submitted on March 2, 2000, into the Arizona SIP.

We have described in more detail the improvements and other revisions to Rule 310 in section 6 of our TSD.

*B. Rule 310.01*

Rule 310.01 establishes requirements for fugitive dust emitted from nonpermitted sources, including unpaved public roads, unpaved parking lots, open areas and vacant lots, erosion-caused deposits of bulk materials onto paved surfaces, and commercial feedlots and/or commercial livestock areas.

The provision of Rule 310.01 are currently in the SIP as sections of former Rule 310. We approved this version of Rule 310 into the SIP on August 4, 1997 as part of the microscale plan. 62 FR 41856.

MCESD adopted Rule 310.01 on February 16, 2000 and Arizona submitted it as a revision to the Arizona SIP on March 2, 2000. As with Rule 310, Rule 310.01 relies on the test methods in Appendix C.

Rule 310.01's provisions are strengthened compared to the similar provisions in the SIP. These rule improvements and other rule changes include:

- The revised rule requires that unpaved roads and unpaved parking lots comply with both: (1) a 20 percent opacity standard; and (2) a silt content or a silt loading standard.
- A new opacity test method has been added to Appendix C to determine compliance with the rule's 20 percent opacity standard for unpaved haul/access roads and unpaved parking lots which is better tailored to these sources.
- Test methods for determining compliance with the new silt content/loading standards has been added to Appendix C.
- Owners/operators of disturbed vacant lots and open areas must maintain a visible crust or meet at least one other applicable stabilization standard, according to new test methods included in the rule and Appendix C.

• Specific control measures for commercial feedlots and/or commercial livestock areas have been added, including: application of dust suppressants or gravel, or installation of shrubs and/or trees within 50 to 100 feet of animal pens.

• The revised rule specifies that unpaved roads with vehicular traffic of 250 or more must be stabilized by June 10, 2000 and unpaved roads with vehicular traffic of 150 or more must be stabilized by June 10, 2004.

• The revised rule specifies that requirements to prevent vehicle trespassing (section 301) apply to vacant lots and open areas that are 0.10 acre or larger and have a cumulative of 500 square feet or more that are driven over and/or used by motor vehicles and/or off-road vehicles.

• The revised rule specifies that requirements to stabilize disturbed vacant lots and open areas (section 302) apply to lots/areas with 0.5 acre or more of disturbed surface.

We believe that Rule 310.01 is a considerable improvement over the SIP-approved version and, combined with MCESD's commitments to continue to improve the Rule and enforcement and compliance with it and the commitments by the County and local jurisdictions to address unpaved roads, unpaved parking lots, and vacant lots, provides for implementation of RACM and BACM and the inclusion of the MSM on the sources subject to it. We, therefore, propose to approve Rule 310.01 as adopted on February 16, 2000 and submitted on March 2, 2000, into the Arizona SIP.

We have described in more detail the strengthenings and other revisions to Rule 310.01 in section 6 of our TSD.

*C. Residential Woodburning Restriction Ordinance*

Combined with MCESD Rule 318 ''Approval of Residential Woodburning Devices'' (adopted April 21, 1999; approved November 8, 1999 (64 FR 60678)), Maricopa County's Residential Woodburning Restriction Ordinance implements a mandatory woodburning curtailment program. The curtailment program restricts the types of woodburning devices that can be used during periods of high PM–10 concentrations. The ordinance allows the Control Officer to declare restricted-burn periods when the particulate matter pollution levels could exceed the ''particulate matter no-burn standard.''

The SIP-approved ordinance provides that restricted-burn periods are declared by the Control Officer when the Control Officer determines that air pollution levels could exceed the 24-hour PM standard at 150 $\mu g/m^3$. The revised ordinance allows the Control Officer to declare restricted-burn periods when the particulate matter pollution levels could exceed the ''particulate matter no-burn standard'' of 120 $\mu g/m^3$. The lower of the particulate matter no burn standard to 120 $\mu g/m^3$ is the only change made to the ordinance as it is currently approved in the SIP.

Because approving this revision will strengthen the SIP and when combined with the MAG plan's other provision for residential woodburning will provide for the implementation of BACM and the inclusion of the MSM, we are proposing to approve it into the SIP. See section F.3.j. ''Residential Wood Combustion.''

*D. CAA Section 110(l) Finding*

CAA section 110(l) prohibits us from approving a revision to the applicable implementation plan if that revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. We interpret section 110(l) to mean that we cannot approve a plan revision if that revision would mean that the plan would no longer provide for attainment or RFP as these are required by the CAA for that plan or if the revision would mean that the plan would no longer meet another requirement of the Act that applies to the plan. For a further discussion of this interpretation, see 61 FR 51599, 51608 (October 3, 1996).

We are proposing to revise the Arizona SIP to incorporate the revised Rule 310, Rule 310.01 and the Maricopa County Residential Woodburning Ordinance in replacement of the previous version of Rule 310 approved in August, 1997 and of the ordinance approved in November, 1999. In addition to the effect on attainment and RFP, the ''other applicable requirement of the Act'' that we must be concerned with for this proposal is the Act's requirements for implementation of RACM and BACM and the inclusion of the MSM.

We are proposing to approve the expeditious attainment and RFP demonstrations in the MAG plan. These demonstrations are in part dependent on approval of the revised Rule 310, Rule 310.01, and the woodburning ordinance.

We are also proposing to find that the MAG plan provides for the implementation of RACM and BACM and the inclusion of the MSM for construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands. Again, these findings are in large part dependent on approval of the revised Rule 310 and Rule 310.01. We, therefore, propose to find that approval of the revised Rule 310 and Rule 310.01 will not interfere with plan's compliance with the Clean Air Act's requirements for attainment, RFP, implementation of RACM and BACM, and inclusion of the MSM as they apply to construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands.

Finally, we are proposing to find that the MAG plan provides for the implementation of BACM and for the inclusion of MSM for residential woodburning. These proposed findings are made in part based on the revised ordinance. Therefore, we propose to find that our approving the ordinance will not interfere with the plan's compliance with the Act's requirements for the implementation of BACM and the inclusion of MSM as they apply to residential woodburning.

We have previously found that the Arizona SIP provided for the implementation of RACM for residential woodburning. 64 FR 60678 (November 8, 1999). The State has now strengthened its residential woodburning program, in part with the revised ordinance; therefore, we propose that approval of the revised ordinance will not interfere with the Arizona SIP's compliance with the requirement for the implementation of RACM as it applies to residential woodburning.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by

Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for us, when reviewing a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

We have complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: April 3, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–8833 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[AZ092–002; FRL–6575–2]**

## Interim Final Determination that State has Corrected the Plan Deficiency and Stay of Sanctions; Phoenix PM–10 Nonattainment Area, Arizona

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

**ACTION:** Interim final determination.

**SUMMARY:** Elsewhere in today's **Federal Register**, EPA is proposing to approve under the Clean Air Act (CAA) provisions of the *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix, Arizona) Nonattainment Area* (MAG plan), February 2000, and control measures on which it relies, that address the annual particulate matter (PM–10) national ambient air quality standard. Based on this proposed approval, we are making an interim final determination that the State of Arizona has corrected the deficiencies in the PM–10 state implementation plan for the Phoenix area for which a sanctions clock began on September 2, 1998. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment and will publish a final rule taking into consideration any comments received on this interim final determination.

**DATES:** This interim final determination is effective April 13, 2000.

Comments must be received by June 12, 2000.

**ADDRESSES:** Written comments must be submitted to Frances Wicher at the Region 9 office listed below.

A copy of docket No. AZ–MA–00–001, containing material relevant to this action and our proposed approval of the MAG plan, is available for public inspection at EPA's Region 9 office during normal business hours.

A copy of the docket is also available for inspection at:

Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217.

Maricopa Association of Governments, 302 North 1st Street, Phoenix, Arizona 85003, (602) 254–6300.

### Electronic Availability

This document, our proposed approval of the MAG plan and the Technical Support Document (TSD) for the approval, are also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, Office of Air Planning, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1248, Email: wicher.frances@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 3, 1998, we disapproved the provisions for implementing reasonably available control measure (RACM) for the annual standard in the 1991 MAG Moderate Area PM–10 Plan because the plan failed to implement RACM for a number of significant sources of PM–10. We also disapproved the attainment demonstration because the failure to implement RACM meant the plan no longer conclusively demonstrated that attainment of the PM–10 standard by the end of 1994, the moderate area attainment date, was impracticable. 63 FR 41326.

Our 1998 disapprovals started sanction clocks under CAA section 179(a). Under section 179(a), once we disapprove a state plan provision because it fails to meet a CAA requirement, a State has 18 months to correct the deficiency that resulted in the disapproval before the first of two sanctions goes into place.[1] If the state still has not corrected the deficiency with 24 months, the second sanction goes into place. The offset sanction was imposed in the Phoenix nonattainment area on March 2, 2000. It will be followed by the imposition of a second sanction, highway funding and approval limitations, on September 2, 2000 if we do not defer or stop the sanction clock.

On February 16, 2000, Arizona submitted the revised MAG serious area PM–10 plan, *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix, Arizona) Nonattainment Area,* February 2000. In the Proposed Rule section of today's **Federal Register**, we are proposing to approve the plan's provisions for the implementation of RACM and the attainment demonstration as they pertain to the annual standard.[2]

Based on our proposed approval of the annual standard provisions in the MAG plan elsewhere in today's **Federal Register**, we believe that it is more likely than not that Arizona has corrected the original deficiencies that prompted our disapprovals. Therefore, we are taking this interim final rulemaking action finding that the State has corrected the deficiencies. However, we are also providing the public with a opportunity to comment on this interim final action. If, based on the comments on this action and the comments on our proposed approval of the State's submittal, we determine that the State's submittal does not comply with the CAA's requirements for RACM and attainment and this interim final action was inappropriate, we will propose to disapprove the State's submittal and will take interim final action finding that the State has not corrected the original disapproval deficiency. Upon a final disapproval of the State's submittal, we would finalize the interim final finding, finding that the State has not corrected the deficiency.

This action does not stop the sanctions clock that started for this area on September 2, 1998, the effective date of our disapproval. However, this action will stay the imposition of the offset sanction and will defer the imposition of the highway sanction. See 40 CFR 51.31(d)(2)(i). If we take final action approving the MAG plan's implementation of RACM and attainment demonstration provisions for the annual standard, such action will stop the sanctions clock and will lift any imposed, stayed or deferred sanctions. However, if at any time we determine that the State, in fact, did not correct the deficiencies, as appropriate, we either will withdraw this interim final determination or take final action finding that the State has not corrected the deficiencies. Such action will retrigger the sanctions consequences as described in the sanctions rule. 40 CFR 52.31.

### II. EPA Action

We are taking interim final action finding that the State has corrected the deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and

[1] The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanction regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

[2] As a serious PM–10 nonattainment area, the plan must now provide for both the implementation of RACM and best available control measures (BACM) under CAA section 189(a)(1)(C) and (b)(1)(B). While we also proposed to approve the BACM provisions of the MAG serious area plan, that determination is not relevant to the sanction issue addressed here.

imposition of the highway sanction will be deferred until we take final action fully approving the MAG plan's implementation of RACM and attainment demonstration provisions for the annual standard or finally disapproving these provisions.

Because we have preliminarily determined that Arizona has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

**III. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely stays and defers federal sanctions. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 13, 2000. 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).

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 3, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–8832 Filed 4–12–00; 8:45 am]

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Federal Register

Thursday,
April 13, 2000

## Part III

# Department of Justice

### Parole Commission

**28 CFR Part 2**

**Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code; Interim Rule and Proposed Rule**

**DEPARTMENT OF JUSTICE**

**Parole Commission**

**28 CFR Part 2**

## Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

**AGENCY:** United States Parole Commission, Justice.

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

**SUMMARY:** The U.S. Parole Commission is amending the Interim Rules that went into effect on August 5, 1998 for parole-eligible D.C. Code prisoners under the National Capital Revitalization and Self-Government Improvement Act of 1997. The interim rules, which are republished in their entirety in this publication, include a number of amendments intended both to improve clarity and to provide more explicit policies with regard to the setting of release dates and departures from the guidelines.

**DATES:** *Effective Date:* May 15, 2000.

*Comment Date:* Comments must be received by June 30, 2000.

**ADDRESSES:** Send comments to office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

**SUPPLEMENTARY INFORMATION:** Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the U.S. Parole Commission assumed the paroling jurisdiction of the Board of Parole of the District of Columbia on August 5, 1998. Interim rules, with a request for public comment, were published at 63 FR 39172 (July 21, 1998), and have been amended twice since that date at 63 FR 57060 (Oct. 26, 1998) and at 64 FR 5611 (Feb. 4, 1999).

In the light of the Commission's experience under these interim rules, the rules are now being republished to include a variety of amendments ranging from minor drafting improvements to some more significant issues of policy and procedure.

The more significant issues include: (a) A provision requiring the concurrence of two Commissioner votes on all final decisions, with three Commissioner votes required if an examiner panel decision is rejected; (b) a provision allowing the Commission to establish a presumptive parole date for any prisoner whose total point score under the guidelines at § 2.80 will permit a grant of parole at the next rehearing (assuming continued positive programming); (c) a provision requiring that departures from the guidelines be consistent with the result indicated by the guidelines for other prisoners with equivalent risk levels; (d) a provision requiring that the factors justifying an upward departure be fully accounted for in the initial continuance whenever possible; and (e) a provision allowing the Commission, upon rescinding a parole grant based upon the prisoner's misconduct, to sanction the misconduct by reference to the guidelines at § 2.36 if the misconduct is not sufficiently serious to warrant increasing the prisoner's total point score by one full point under § 2.80.

The new presumptive date provision described above is intended to increase the ability of prisoners and prison officials to accomplish the goals of the release planning process well in advance of the actual release of the prisoner. Timely release planning is currently a serious issue for prison administrators. The setting of a presumptive release date will not deprive the prisoner of the rehearing that would normally be conducted, except in instances where the Commission decides to reopen the case and grant the prisoner an earlier date of parole on the record. Setting a presumptive parole date up to nine months from the scheduled rehearing date will be consistent with the outcome otherwise expected by the prisoner, *i.e.,* a rehearing followed by the granting of a parole effective date 6 to 9 months from the date the rehearing was held. For cases in which parole is denied through an upward departure, the decisionmaking policies described above should be regarded as essential principles governing the application of any modern parole guideline system.

Finally, the Commission decided not to amend its rules to change the existing requirement that a parole effective date, once granted, shall not be retarded more than 120 days for release planning purposes without a hearing. The Commission has experienced frequent requests from prison officials for the retarding of parole dates based upon significant delays in moving parole grantees to pre-release halfway houses. The Commission is working with prison officials in both District of Columbia and federal facilities to expedite the halfway house placement and release planning process, and will retain the 120-day limit. If release planning delays have continued beyond the 120-day limit, the Commission will either grant parole or place the inmate on the next docket for a special reconsideration hearing. A special reconsideration hearing will be scheduled whenever it appears that the risk level presented by the inmate is such that halfway house placement (or other missing component of the release planning process) will be essential for the parole of the prisoner to meet the basic statutory criteria at D.C. Code 24–204. For prisoners who are already in halfway houses at the 120 day point, the Commission will order an appropriate retardation of the release date on the assumption that such prisoners will not wish to be returned to a prison facility for a special reconsideration rehearing.

### Implementation

The regulations set forth below will be applied to all prisoners serving parole-eligible felony sentences under the District of Columbia Code, except that the guidelines in § 2.80 will be applied only to prisoners for whom the initial parole hearing is conducted on or after August 5, 1998. Any provision in these regulations that refers to the jurisdiction of the Parole Commission over District of Columbia Code parolees is intended to refer to the exercise of the authority that will be transferred to the U.S. Parole Commission on August 5, 2000.

### Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these amended interim rules do not constitute a significant rule within the meaning of Executive Order 12866. The amended interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

### The Amended Rules

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

## PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Subpart C is revised to read as follows:

### Subpart C—District of Columbia Code Prisoners and Parolees

Sec.

2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.
2.71 Application for parole.
2.72 Hearing procedure.
2.73 Parole suitability criteria.
2.74 Decision of the Commission.
2.75 Reconsideration proceedings.
2.76 Reduction in minimum sentence.
2.77 Medical parole.
2.78 Geriatric parole.
2.79 Good time forfeiture.
2.80 Guidelines for D.C. Code offenders.
2.81 Reparole decisions.
2.82 Effective date of parole.
2.83 Release planning.
2.84 Release to other jurisdictions.
2.85 Conditions of release.
2.86 Release on parole; rescission for misconduct.
2.87 Mandatory release.
2.88 Confidentiality of parole records.
2.89 Miscellaneous provisions.
2.90 Prior orders of the Board of Parole.

## Subpart C—District of Columbia Code: Prisoners and Parolees

### § 2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.

(a) The U.S. Parole Commission shall exercise authority over District of Columbia Code offenders pursuant to Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, 111 Stat. 712, and D.C. Code 24–209. The rules in this Subpart shall govern the operation of the U.S. Parole Commission with respect to D.C. Code offenders and are the pertinent parole rules of the District of Columbia as amended and supplemented pursuant to section 11231(a)(1) of the Act.

(b) The Commission shall have sole authority to grant parole, and to establish the conditions of release, for all District of Columbia Code prisoners who are serving sentences for felony offenses, and who are eligible for parole by statute, including offenders who have been returned to prison upon the revocation of parole or mandatory release. (D.C. Code 24–208). The above authority shall include youth offenders who are committed to prison for treatment and rehabilitation based on felony convictions under the D.C. Code. (D.C. Code 24–804(a).)

(c) The Commission shall have authority to recommend to the Superior Court of the District of Columbia a reduction in the minimum sentence of a District of Columbia Code prisoner, if the Commission deems such recommendation to be appropriate. (D.C. Code 24–201(c).)

(d) The Commission shall have authority to grant parole to a prisoner who is found to be geriatric, permanently incapacitated, or terminally ill, notwithstanding the minimum term imposed by the sentencing court. (D.C. Code 24–263 through 267.)

(e) The Commission shall have authority over all District of Columbia Code felony offenders who have been released to parole or mandatory release supervision, including the authority to return such offenders to prison upon an order of revocation. (D.C. Code 24–206.)

### § 2.71 Application for parole.

(a) A prisoner (including a committed youth offender) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each institution and shall be provided to a prisoner who is eligible for parole consideration. The Commission may then conduct an initial hearing or grant an effective date of parole on the record. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) To the extent practicable, the initial hearing for an eligible adult prisoner who has applied for parole shall be held at least 180 days prior to such prisoner's date of eligibility for parole. The initial hearing for a committed youth offender shall be scheduled during the first 120 days after admission to the institution that is responsible for developing his rehabilitative program.

(c) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. A prisoner who declines either to apply for or waive parole consideration shall be deemed to have waived parole consideration.

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

### § 2.72 Hearing procedure.

(a) Each eligible prisoner for whom an initial hearing has been ordered shall appear in person before an examiner of the Commission. The examiner shall review with the prisoner the guidelines at § 2.80, and shall discuss with the prisoner such information as the examiner deems relevant, including the prisoner's offense behavior, criminal history, institutional record, health status, release plans, and community support. If the examiner determines that the available file material is not adequate for this purpose the examiner may order the hearing to be postponed to the next docket so that the missing information can be requested.

(b) Parole hearings may be held in District of Columbia facilities (including District of Columbia contract facilities) and federal facilities (including federal contract facilities).

(c) A prisoner appearing for a parole hearing in a federal facility may have a representative pursuant to § 2.13(b). A prisoner appearing for a parole hearing in a facility other than a federal facility shall not be accompanied by counsel or any other person (except a staff member of the facility) except in such facilities as the Commission may designate as suitable for the appearance of representatives.

(d) Prehearing disclosure of file material will be available to prisoners and their representatives only in the case of prisoners confined in federal facilities, and pursuant to § 2.55.

(e) A victim of a crime, or a representative of the immediate family of a victim if the victim has died, shall have the right:

(1) To be present at the parole hearings of each offender who committed the crime, and

(2) To testify and/or offer a written or recorded statement as to whether or not parole should be granted, including information and reasons in support of such statement. A written statement may be submitted at the hearing or provided separately. The prisoner may be excluded from the hearing room during the appearance of a victim or representative who gives testimony. In lieu of appearing at a parole hearing, a victim or representative may request permission to appear before an examiner (or other staff member), who shall record and summarize the victim's or representative's testimony. Whenever new and significant information is provided under this rule, the hearing examiner will summarize the information at the parole hearing and will give the prisoner an opportunity to respond. Such summary shall be consistent with a reasonable request for

confidentiality by the victim or representative.

(f) Attorneys, family members, relatives, friends of the prisoner, or other interested persons desiring to submit information pertinent to any prisoner may do so at any time, but such information must be received by the Commission at least 30 days prior to a scheduled hearing in order to be considered at that hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing. An office visit at a time other than set forth in this paragraph may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22.

(g) A full and complete recording of every parole hearing shall be retained by the Commission. Upon a request pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

(h) Because parole decisions must be reached through a record-based hearing and voting process, no contacts shall be permitted between any person attempting to influence the Commission's decision-making process, and the examiners and Commissioners of the Commission, except as provided in this subpart.

**§ 2.73 Parole suitability criteria.**

(a) In accordance with D.C. Code 24–204(a), the Commission shall be authorized to release a prisoner on parole in its discretion after the prisoner has served the minimum term of the sentence imposed, if the following criteria are met:

(1) The prisoner has substantially observed the rules of the institution;

(2) There is a reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court presumptively satisfies the need for punishment in respect to the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Table at § 2.80. However, there may be exceptional cases in which the gravity of the offense is sufficient to warrant an upward departure from § 2.80 and denial of parole.

**§ 2.74 Decision of the Commission.**

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a notice of action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(b) Whenever a decision is rendered within the applicable guideline established in this subpart, it will be deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c). All final parole decisions (granting, denying, or revoking parole) shall be based on the concurrence of two Commissioner votes, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. All other decisions may be based on a single Commissioner vote, except as expressly provided in these rules.

**§ 2.75 Reconsideration proceedings.**

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. The prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if no docket of hearings is scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time (''continue to expiration'').

(b) The first reconsideration date shall be calculated from the prisoner's eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent reconsideration date shall be calculated from the date of the last hearing. In the case of a waiver or substantial delay in holding the initial hearing, the Commission may conduct *nunc pro tunc* a combined initial hearing and such rehearings as would otherwise have been held during the delay.

(c) Notwithstanding the provisions of paragraph (a), the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release. The scheduling of a reconsideration date does not imply that parole will be granted at such hearing.

(d) Prior to the parole reconsideration date, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without conducting the scheduled in-person hearing.

(e) Notwithstanding a previously established reconsideration date, the Commission may also reopen any case for a special reconsideration hearing, as provided in § 2.28, upon the receipt of new and significant information concerning the prisoner.

**§ 2.76 Reduction in minimum sentence.**

(a) A prisoner who has served three (3) or more years of the minimum term of his or her sentence may request the Commission to file an application with the sentencing court for a reduction in the minimum term pursuant to D.C. Code 24–201c. The prisoner's request to the Commission shall be in writing and shall state the reasons that the prisoner believes such request should be granted. The Commission shall require the submission of a progress report before approving such a request.

(b) Approval of a prisoner's request under this section shall require the concurrence of a majority of the Commissioners holding office.

(c) Pursuant to D.C. Code 24–201c, the Commission may file an application to the sentencing court for a reduction of a prisoner's minimum term if the Commission finds that:

(1) The prisoner has completed three years of the minimum term imposed by the court;

(2) The prisoner has shown, by report of the responsible prison authorities, an outstanding response to the rehabilitative program(s) of the institution;

(3) The prisoner has fully observed the rules of each institution in which the prisoner has been confined;

(4) The prisoner appears to be an acceptable risk for parole based on both the prisoner's pre-and post-incarceration record; and

(5) Service of the minimum term imposed by the court does not appear necessary to achieve appropriate punishment and deterrence.

(d) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If, after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney shall file the application with the sentencing court.

(e) If a prisoner's request under this section is denied by the Commission, there shall be a waiting period of two (2) years before the Commission will again consider the prisoner's request, absent exceptional circumstances.

**§ 2.77 Medical parole.**

(a) Upon receipt of a report from the institution in which the prisoner is confined that the prisoner is terminally ill, or is permanently and irreversibly incapacitated by a physical or medical condition that is not terminal, the Commission shall determine whether or not to release the prisoner on medical parole. Release on medical parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for medical parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a medical parole on the basis of terminal illness if:

(1) The institution's medical staff has provided the Commission with a reasonable medical judgment that the prisoner is within six months of death due to an incurable illness or disease; and

(2) The Commission finds that:

(i) The prisoner will not be a danger to himself or others; and

(ii) Release on parole will not be incompatible with the welfare of society.

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

(1) The prisoner will not be a danger to himself or others because his condition renders him incapable of continued criminal activity; and

(2) Release on parole will not be incompatible with the welfare of society.

(d) The seriousness of the prisoner's crime shall be considered in determining whether or not a medical parole should be granted prior to completion of the prisoner's minimum sentence.

(e) A prisoner, or the prisoner's representative, may apply for a medical parole by submitting an application to the institution case management staff, who shall forward the application accompanied by a medical report and any recommendations within 15 days. The Commission shall render a decision within 15 days of receiving the application and report.

(f) A prisoner, the prisoner's representative, or the institution may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for medical parole (D.C. Code 24–267); and

(2) A prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

**§ 2.78 Geriatric parole.**

(a) Upon receipt of a report from the institution in which the prisoner is confined that a prisoner who is at least 65 years of age has a chronic infirmity, illness, or disease related to aging, the Commission shall determine whether or not to release the prisoner on geriatric parole. Release on geriatric parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for geriatric parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a geriatric parole if the Commission finds that:

(1) There is a low risk that the prisoner will commit new crimes; and

(2) The prisoner's release would not be incompatible with the welfare of society.

(c) The seriousness of the prisoner's crime, and the age at which it was committed, shall be considered in determining whether or not a geriatric parole should be granted prior to completion of the prisoner's minimum sentence.

(d) A prisoner, or a prisoner's representative, may apply for a geriatric parole by submitting an application to the institution case management staff, who shall forward the application accompanied by a medical report and any recommendations within 30 days. The Commission shall render a decision within 30 days of receiving the application and report.

(e) In determining whether or not to grant a geriatric parole, the Commission shall consider the following factors (D.C. Code 24–265(c)(1)–(7)):

(1) Age of the prisoner;

(2) Severity of illness, disease, or infirmities;

(3) Comprehensive health evaluation;

(4) Institutional behavior;

(5) Level of risk for violence;

(6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings.

(f) A prisoner, the prisoner's representative, or the institution, may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for geriatric parole (D.C. Code 24–267); and

(2) A prisoner shall not be eligible for geriatric parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

**§ 2.79 Good time forfeiture.**

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code 24–204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will

consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s). The Commission must be satisfied that the prisoner has served a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

**§ 2.80 Guidelines for D.C. Code offenders.**

(a) *Introduction.* In determining whether an eligible prisoner should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to the pre- and post-incarceration factors described in the Point Assignment Table set forth in paragraph (f) of this section. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (m) of this section.

(b) *Salient factor score and criminal record.* The prisoner's Salient Factor Score shall be determined by reference to the Salient Factor Scoring Manual in § 2.20. The Salient Factor Score is used to assist the Commission in assessing the probability that an offender will live and remain at liberty without violating the law. The prisoner's record of criminal conduct (including the nature and circumstances of the current offense) shall be used to assist the Commission in determining the probable seriousness of the recidivism that is predicted by the Salient Factor Score.

(c) *Disciplinary infractions.* The Commission shall assess whether the prisoner has been found guilty of committing disciplinary infractions while under confinement for the current offense. The Commission shall refer to the offense classification tables of the D.C. Department of Corrections or the Bureau of Prisons, as applicable, in determining whether the prisoner's disciplinary record should be counted on the point score. A single Class I or Code 100 offense, or two or more Class II or Code 200 offenses, shall be counted as negative institutional behavior at an initial hearing or any rehearing. A persistent record of lesser offenses may also be counted as negative institutional behavior at an initial hearing or a rehearing. At initial hearings, an infraction free period of at least three years preceding the date of the hearing may be considered by the Commission as sufficient to exclude from consideration a previous record of Class I (or Code 100) or Class II (or Code 200) offenses, provided that such offenses would result in not more than one point added to the prisoner's score.

(d) *Program achievement.* The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Where prison programs and work assignments are limited or unavailable, the Commission may exercise discretion based on the prisoner's record of behavior. Points may be deducted for program achievement regardless of whether points have been added for negative institutional behavior during the same period.

(e) *Implementation.* These guidelines shall be applied to all prisoners who are given initial parole hearings on or after August 5, 1998. For prisoners whose initial hearings were held prior to August 5, 1998, the Commission shall render its decisions by reference to the guidelines applied by the D.C. Board of Parole. However, when a decision outside such guidelines has been made by the Board, or is ordered by the Commission, the Commission may determine the appropriateness and extent of the departure by comparison with the guidelines in this section. The Commission may also correct any error in the calculation of the D.C. Board's guidelines.

(f) *Point Assignment Table.* Add the applicable points from Categories I–III to determine the base point score. Then add or subtract the points from Categories IV and V to determine the total point score.

POINT ASSIGNMENT TABLE

| | Salient Factor Score |
|---|---|
| **Category I: Risk of Recidivism** | |
| 10–8 (Very Good Risk): | +0 |
| 7–6 (Good Risk) | +1 |
| 5–4 (Fair Risk) | +2 |
| 3–0 (Poor Risk) | +3 |
| **Category II: Current or Prior Violence (Type of Risk)** | |
| **Note:** Use the highest applicable subcategory. If no subcategory is applicable, score = 0. | |
| A. Violence in current offense, and any felony violence in two or more prior offenses | +4 |
| B. Violence in current offense, and any felony violence in one prior offense | +3 |
| C. Violence in current offense | +2 |
| D. No violence in current offense and any felony violence in two or more prior offenses | +2 |
| E. Possession of firearm in current offense if current offense is not scored as a crime of violence | +2 |
| F. No violence in current offense and any felony violence in one prior offense | +1 |
| **Category III: Death of Victim or High Level Violence** | |
| **Note:** Use highest applicable subcategory. If no subcategory is applicable, score = 0. A current offense that involved high level violence must be scored under both Category II (A, B, or C) and under Category III. | |
| A. Current offense was high level or other violence with death of victim resulting | +3 |
| B. Current offense involved attempted murder, conspiracy to murder, solicitation to murder, or any willful violence in which the victim survived despite death having been the most probable result at the time the offense was committed | +2 |
| C. Current offense involved high level violence (other than the behaviors described above) | +1 |
| Base Point Score (Total of Categories I–III) | |
| **Category IV: Negative Institutional Behavior** | |
| **Note:** Use the highest applicable subcategory. If no subcategory is applicable, score = 0. | |
| A. Aggravated negative institutional behavior involving: | |
| (1) Assault upon a correctional staff member, with bodily harm inflicted or threatened, | |
| (2) Possession of a deadly weapon, | |
| (3) Setting a fire so as to risk human life, | |

POINT ASSIGNMENT TABLE—Continued

| | Salient Factor Score |
|---|---|
| (4) Introduction of drugs for purposes of distribution, or | |
| (5) Participating in a violent demonstration or riot | +2 |
| B. Ordinary negative institutional behavior | +1 |
| **Category V: Program Achievement** | |
| **Note:** Use the highest applicable subcategory. If no subcategory is applicable, score = 0. | |
| A. No program achievement | 0 |
| B. Ordinary program achievement | −1 |
| C. Superior program achievement | −2 |
| Total Point Score (Total of Categories I–V) | |

(g) *Definitions and instructions for application of point assignment table.* (1) *Salient factor score* means the salient factor score set forth at § 2.20.

(2) *High level violence* in Category III means any of the following offenses—

(i) Murder;

(ii) Voluntary manslaughter;

(iii) Arson of a building in which a person other than the offender was present or likely to be present at the time of the offense;

(iv) Forcible rape or forcible sodomy (first degree sexual abuse);

(v) Kidnapping, hostage taking, or any armed abduction of a victim during a carjacking or other offense;

(vi) Burglary of a residence while armed with any weapon if a victim was in the residence during the offense;

(vii) Obstruction of justice through violence or threats of violence;

(viii) Any offense involving sexual abuse of a person less than sixteen years of age;

(ix) Mayhem, malicious disfigurement, or any offense defined as other violence in paragraph (g)(4) of this section that results in *serious bodily injury* as defined in paragraph (g)(3) of this section;

(x) Any offense defined as *other violence* in paragraph (g)(4) of this section which the offender intentionally discharged a firearm;

(3) *Serious bodily injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) *Other violence* means any of the following felony offenses that does not qualify as *high level violence*—

(i) Robbery;

(ii) Residential burglary;

(iii) Felony assault;

(iv) Felony offenses involving a threat, or risk, of bodily harm;

(v) Felony offenses involving sexual abuse or sexual contact.

(5) Attempts, conspiracies, and solicitations shall be scored by reference to the substantive offense that was the object of the attempt, conspiracy, or solicitation; except that Category IIIA shall apply only if death actually resulted.

(6) *Current offense* means any criminal behavior that is either:

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (i.e., part of the same course of conduct as the offense of conviction). In probation violation cases, the current offense includes both the original offense and the violation offense, except that the original offense shall be scored as a prior conviction (with a prior commitment) rather than as part of the current offense, if the prisoner served more than six months in prison for the original offense before commencement of probation.

(7) Category IIE applies whenever a firearm is possessed by the offender during, or used by the offender to commit, any offense that is not scored under Category II(A–D). Category IIE also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense. Possession for purposes of Category IIE includes constructive possession.

(8) Category IIIA applies if the death of a victim is:

(i) Caused by the offender, or

(ii) Caused by an accomplice and the killing was planned or approved by the offender in furtherance of a joint criminal venture.

(9) In some cases, negative institutional behavior that involves violence will result in a higher score if scored as an additional current offense under Categories II and/or III, than if scored under Category IVA. In such cases, the prisoner's point score is recalculated to reflect the conduct as an additional current offense under Categories II and/or III, rather than as a disciplinary infraction under Category IVA. For example, the attempted murder of another inmate will result in a higher score when treated as an additional current offense under Categories II and III, if the offense of conviction was scored under Category IIC only as *violence in current offense.* If negative institutional behavior is treated as an additional current offense, points may nonetheless be assessed under Category IVA or B for other disciplinary infractions.

(10) *Superior program achievement* means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish.

(h) *Guidelines for decisions at initial hearing—adult offenders.* In considering whether to parole an adult offender at an initial hearing, the Commission shall determine the offender's total point score and then consult the following guidelines for the appropriate action:

| Total points | Guideline recommendation |
|---|---|
| (1) if points =0 | Parole at initial hearing with low level of supervision indicated. |
| (2) if points =1 | Parole at initial hearing with high level of supervision indicated. |
| (3) if points =2 | Parole at initial hearing with highest level of supervision indicated. |
| (4) if points =3+ | Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section. |

(i) *Guidelines for decisions at initial hearing—youth offenders.* In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

| Total points | Guideline recommendation |
|---|---|
| (1) if points = 0 | Parole at initial hearing with conditions established to address treatment needs; |
| (2) if points = 1+ | Deny parole at initial hearing and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less. |

(j) *Guidelines for time to rehearing adult offenders.* (1) If parole is denied or rescinded, the time to the subsequent hearing for an adult offender shall be determined by the following guidelines:

| Base point score (categories I through III) | Months to rehearing |
|---|---|
| 0–4 | 12–18 |
| 5 | 18–24 |
| 6 | 18–24 |
| 7 | 18–24 |
| 8 | 18–24 |
| 9 | 22–28 |
| 10 | 26–32 |

(2) The time to a rehearing shall be determined by the prisoner's base point score, and not by the total point score at the current hearing, which indicates only whether parole should be granted or denied. Exception: In the case of institutional misconduct deemed insufficiently serious to warrant the addition of one or more points for negative institutional behavior, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36.

(3) At any initial hearing or rehearing, if the prisoner's total point score is 4 or less, the Commission may order both a rehearing date and a presumptive parole date that is not more than 9 months from the rehearing date. Such presumptive date may be converted to a parole effective date following the rehearing, or the case may be reopened based on new favorable information and a parole effective date granted on the record.

(k) *Guidelines for decisions at subsequent hearing—adult offenders.* In determining whether to parole an adult offender at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

| Total points | Guideline recommendation |
|---|---|
| if points = 0–3 | Parole with highest level of supervision indicated. |
| if points = 4+ | Deny parole at rehearing and schedule a further rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section. |

(l) *Guidelines for decisions at subsequent hearing—youth offenders.* (1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

| Total points | Guideline recommendation |
|---|---|
| if points = 0–3 | Parole with highest level of supervision indicated. |
| if points = 4+ | Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less. |

(2) Prison officials may in any case recommend an earlier rehearing date than ordered by the Commission if the Commission's program objectives have been met.

(m) *Decisions outside the guidelines—all offenders.* (1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a parole candidate notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (j) of this section. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the Notice of Action the specific factors that it relied on in departing from the applicable guideline or guideline range.

(2) If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. If possible, the factors justifying

such a departure shall be fully accounted for in the initial continuance, so that the guidelines can be followed at subsequent hearings. In some cases, however, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

(3) Factors that may warrant a decision above the guidelines include, but are not limited to, the following:

(i) *Poorer parole risk than indicated by salient factor score.* The offender is a poorer parole risk than indicated by the salient factor score because of—

(A) Unusually persistent failure under supervision (pretrial release, probation, or parole);

(B) Unusually persistent history of criminally related substance (drug or alcohol) abuse and resistance to treatment efforts; or

(C) Unusually extensive prior record (sufficient to make the offender a poorer risk than the ''poor'' prognosis category).

(ii) *More serious parole risk.* The offender is a more serious parole risk than indicated by the total point score because of—

(A) Prior record of violence more extensive or serious than that taken into account in the guidelines;

(B) Current offense demonstrates extraordinary criminal sophistication, criminal professionalism in the employment of violence or threats of violence, or leadership role in instigating others to commit a serious offense;

(C) Unusual cruelty to the victim (beyond that accounted for by scoring the offense as high level violence), or predation upon extremely vulnerable victim;

(D) Unusual propensity to inflict unprovoked and potentially homicidal violence, as demonstrated by the circumstances of the current offense; or

(E) Additional serious offense(s) committed after (or while on bond or fugitive status from) current offense that show unusual capacity for sustained, repeated violent criminal activity.

(4) Factors that may warrant a decision below the guidelines include, but are not limited to, the following:

(i) *Better parole risk than indicated by salient factor score.* The offender is a better parole risk than indicated by the salient factor score because of (applicable only to offenders who are not already in the very good risk category)—

(A) A prior criminal record resulting exclusively from minor offenses;

(B) A substantial crime-free period in the community for which credit is not already given on the Salient Factor Score;

(C) A change in the availability of community resources leading to a better parole prognosis;

(ii) Other factors:

(A) Unusually lengthy period of incarceration on the minimum sentence (in relation to the seriousness of the offense and prior record) that warrants an initial parole determination as if the offender were being considered at a rehearing;

(B) Substantial period in custody on other sentence(s) sufficient to warrant a finding in paragraph (m)(4) of this section; or

(C) Clearly exceptional program achievement.

### § 2.81 Reparole decisions.

Each decision to grant or deny reparole shall be made by reference to the Commission's reparole guidelines at § 2.21, which shall include the establishment of a presumptive or effective release date pursuant to § 2.12(b) and interim hearings pursuant to § 2.14. However, if the prisoner is eligible for parole on a new D.C. Code felony sentence that has been aggregated with the prisoner's parole violation term, or is a youth offender serving the remainder of a Youth Rehabilitation Act sentence following revocation of parole, the applicable guideline at § 2.80 (adult or youth) shall be applied. Reparole hearings shall be conducted according to the procedures set forth in § 2.72.

### § 2.82 Effective date of parole.

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit placement in a halfway house or to allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become effective until the prisoner becomes eligible for release on parole.

### § 2.83 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A parole certificate shall not be issued until a release plan has been approved by the Commission. In the case of mandatory release, the Commission shall review each prisoner's release plan to determine whether the imposition of any special conditions should be ordered to promote the prisoner's rehabilitation and protect the public safety.

(b) If a parole date has been granted, but the prisoner has not submitted a proposed release plan, the appropriate correctional or supervision staff shall assist the prisoner in formulating a release plan for investigation.

(c) After investigation by a Community Supervision Officer, the proposed release plan shall be submitted to the Commission 30 days prior to the prisoner's parole or mandatory release date.

(d) A Commissioner may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate an acceptable release plan prove futile by the expiration of such period, or if the Offender Supervision staff reports that there are insufficient resources to provide effective supervision for the individual in question, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be paroled, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan:

(1) Evidence that the parolee will have an acceptable residence;

(2) Evidence that the parolee will be legitimately employed as soon as released; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission;

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.

### § 2.84 Release to other jurisdictions.

The Commission, in its discretion, may parole any individual from a

facility of the District of Columbia, to live and remain in a jurisdiction other than the District of Columbia.

**§ 2.85 Conditions of release.**

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificate issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his release, he shall report to the Community Supervision Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his supervision office, he shall communicate with the U.S. Parole Commission, Chevy Chase, Maryland 20815–7286.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the Community Supervision Officer to whom he is assigned within three days, he shall report instead to the nearest U.S. Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from his Community Supervision Officer.

(4) The parolee shall notify his Community Supervision Officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his Community Supervision Officer between the first and third day of each month. He shall also report to his Community Supervision Officer at other times as the officer directs, providing complete and truthful information.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall report within two days to his Community Supervision Officer (or supervision office) if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency without authorization from the Commission.

(8) The parolee shall work regularly unless excused by his Community Supervision Officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his Community Supervision Officer any changes in employment or employment status.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer controlled substances (marijuana or narcotic or other habit-forming drugs) unless prescribed or advised for the parolee by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record without the permission of his Community Supervision Officer.

(11) The parole shall not posses a firearm or other dangerous weapon.

(12) The parolee shall permit visits by his Community Supervision Officer to his residence and to his place of business or occupation. He shall permit confiscation by his Community Supervision Officer of any materials which the officer believes may constitute contraband in the parolee's possession and which he observes in plain view in the parolee's residence, place of business or occupation, vehicle(s), or on his person. The Commission may also, when a reasonable basis for so doing is presented, modify the conditions of parole to require the parolee to permit the Community Supervision Officer to conduct searches and seizures of concealed contraband on the parolee's person, and in any building, vehicle, or other area under the parolee's control, at such times as the officer shall decide.

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested by his Community Supervision Officer that is relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Community Supervision Officer in establishing an installment payment schedule.

(14) The parolee shall submit to a drug test whenever ordered by his Community Supervision Officer.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release. The ten-day notice requirement shall not apply to a modification of the conditions of parole in the following circumstances:

(1) Following a revocation hearing;

(2) Upon a finding that immediate modification of the conditions of parole is required to prevent harm to the parolee or to the public; or

(3) In response to a request by the parolee for a modification of the conditions of parole.

(c) The Commission may, as a condition of parole, require a parolee to reside in a community corrections center, or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require that a parolee remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices. A condition under this paragraph may be imposed only as an alternative to incarceration.

(e) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of his refusal to sign. To be considered for parole again, the prisoner must reapply for parole.

(f) With respect to prisoners who are required to be released to supervision through good time reductions (mandatory release), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the prisoner to sign his certificate.

(g) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of a warrant issued by the Commission, whether before or after the original expiration date, may be charged as a basis for revocation. In such a case, the warrant may be supplemented at any time.

(h) The Commission may require a parolee, when there is evidence of prior or current alcohol dependence or abuse, to participate in an alcohol aftercare treatment program. In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.

(i) The Commission may require a parolee, where there is evidence of prior or current drug dependence or abuse, to participate in a drug treatment program, which shall include at least two periodic tests to determine whether parolee has reverted to the use of drugs (including alcohol). In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment. In the event such condition is imposed prior to an eligible prisoner's release from prison, any grant of parole or reparole shall be contingent upon the prisoner passing all pre-release drug tests administered by prison officials.

(j) Parolees are expected by the Commission to understand the conditions of parole according to their plain meaning, and to seek the guidance of their Community Supervision Officers before engaging in any conduct that may constitute a violation thereof. Community Supervision Officers may issue instructions to parolees to refrain from particular conduct that would violate parole, or to take specific steps to avoid or correct a violation of parole, as well as such other directives as may be authorized by the conditions imposed by the Commission.

**§ 2.86 Release on parole; rescission for misconduct.**

(a) When a parole effective date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good conduct record in the institution or prerelease program to which the prisoner has been assigned.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or retard a parole effective date or rescind and a parole date previously granted based upon the receipt of any new and significant information concerning the prisoner, including disciplinary infractions. The Commission may retard a parole date for disciplinary infractions (*e.g.,* to permit the use of graduated sanctions) for up to 120 days without a hearing, in addition to any retardation ordered under 2.83(d). If a parole effective date is rescinded for disciplinary infractions, an appropriate sanction shall be determined either by adding the appropriate points for negative institutional behavior to the prisoner's total point score, or by reference to § 2.36 if the misconduct is not sufficiently serious to warrant a continuance under § 2.80(j). A total point score of 0–2 shall be adjusted to a total point score of 3 prior to adding points for negative institutional behavior pursuant to the Point Assignment Table at § 2.80(f).

(c) After a prisoner has been granted a parole effective date, the institution shall notify the Commission of any serious disciplinary infractions committed by the prisoner prior to the date of actual release. In such case, the prisoner shall not be released until the institution has been advised that no change has been made in the Commission's order granting parole.

(d) A grant of parole becomes operative upon the authorized delivery of a certificate of parole to the prisoner, and the signing of that certificate by the prisoner, who thereafter becomes a parolee.

**§ 2.87 Mandatory release.**

(a) When a prisoner has been denied parole at the initial hearing and all subsequent considerations, or parole consideration is expressly precluded by statute, the prisoner shall be released at the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by statute.

(b) Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, except that if the offense of conviction was committed before April 11, 1987, such expiration date shall be less one hundred eighty (180) days. Every provision of this subpart relating to an individual on parole shall be deemed to include individuals on mandatory release.

**§ 2.88 Confidentiality of parole records.**

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552(b)), the contents of parole records shall be confidential and shall not be disclosed outside the Commission except as provided in paragraphs (b) and (c) of this section.

(b) Information that is subject to release to the general public without the consent of the prisoner shall be limited to the information specified in § 2.37(c).

(c) Information other than as described in paragraph (b) of this section may be disclosed without the consent of the prisoner only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552(b)). See § 2.56.

**§ 2.89 Miscellaneous provisions.**

Except to the extent otherwise provided by law, the following sections in Subpart A of this part are also applicable to District of Columbia Code offenders:

Sec.
2.5 (Sentence aggregation)
2.7 (Committed fines and restitution orders)
2.8 (Mental competency procedures)
2.10 (Date service of sentence commences)
2.16 (Parole of prisoner in State, local, or territorial institution)
2.19 (Information considered)
2.22 (Communication with Commission)
2.23 (Delegation to hearing examiners)
2.30 (False information or new criminal conduct; Discovery after release)
2.32 (Parole to local or immigration detainers)
2.56 (Disclosure of Parole Commission file)
2.63 (Rewarding assistance in the prosecution of other offenders: criteria and guidelines)
2.66 (Aggregated U.S. and D.C. Code sentences)

**§ 2.90 Prior orders of the Board of Parole.**

Any prior order entered by the Board of Parole of the District of Columbia shall be accorded the status of an order of the Parole Commission unless duly reconsidered and changed by the Commission at a regularly scheduled hearing. It shall not constitute grounds for reopening a case that the prisoner is subject to an order of the Board of Parole that fails to conform to a provision of this part.

Dated: April 5, 2000.

**Michael J. Gaines,**

*Chairman, U.S. Parole Commission.*

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**DEPARTMENT OF JUSTICE**

**Parole Commission**

**28 CFR Part 2**

## Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Parole Commission is proposing to incorporate into the Code of Federal Regulations, in amended and supplemented form, the regulations of the District of Columbia that govern the authority that will be assumed by the U.S. Parole Commission on August 5, 2000, with respect to felony offenders on parole. The authority of the District of Columbia Board of Parole to oversee the supervision and to revoke the paroles of felony offenders will be transferred to the U.S. Parole Commission under the National Capital Revitalization and Self-Government Improvement Act of 1997, which permits the Commission to amend and supplement the District's regulations pursuant to federal rulemaking procedures.

**DATES:** Comments must be received by June 30, 2000.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

**SUPPLEMENTARY INFORMATION:** Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the U.S. Parole Commission will be given, effective August 5, 2000, the authority presently exercised by the Board of Parole of the District of Columbia with respect to felony offenders on parole, including the jurisdiction to revoke parole and to modify the conditions of parole. See D.C. Code 24–1231(a)(2).

After an extensive review of the relevant regulations of the Board of Parole of the District of Columbia concerning the supervision of parolees, the release of parolees from active supervision, and the procedures governing the exercise of the authority to revoke parole, the Commission has decided to republish these regulations, with appropriate amendments, in the Code of Federal Regulations. These regulations, when adopted, would be added to the regulations for District of Columbia offenders that were originally published at 63 FR 39172 (July 21, 1998) (as amended).

Overall, the proposed regulations would maintain the present functions and authority of the Board of Parole of the District of Columbia, with certain amendments to conform to federal policy and practice. For both Federal and D.C. Code parolees, parole revocation procedures ultimately derive from the same source: *Morrissey* v. *Brewer,* 408 U.S. 471 (1972). *Morrissey* also describes the basic goals of parole supervision in a way that remains valid today for both the U.S. Code and D.C. Code parole systems. The amended regulations are intended exclusively to improve the ways in which the District of Columbia parole system is carried out, consistently with the approach taken in the *Morrissey* decision.

These improvements include a requirement for preliminary interviews as described in *Morrissey*, and an arrangement with the D.C. Public Defender Service whereby attorney representation would be obtained directly following the preliminary interview. This would be in contrast to the current D.C. Board of Parole rule that prohibits Board members and staff from assisting arrested parolees who wish to obtain the services of counsel. See 28 D.C.M.R. 219.9.

Although the procedures for release from active supervision would remain the same, the Commission proposes to supplement those procedures with explicit guidelines derived from the federal standards at 28 CFR 2.43 governing the early termination of parole for U.S. Code offenders. These guidelines are intended to ensure that the length of time a parolee spends under parole supervision is proportionate to the level of risk to the public safety suggested by the parolee's criminal offense and prior record, as measured by the Salient Factor Score and Base Point Score at 28 CFR 2.80.

The Commission also proposes to codify a procedure whereby an executed warrant may be withdrawn within 72 hours of execution in order to release the arrested parolee to another jurisdiction's warrant. (The Commission is not always aware, when it issues a warrant, that the parolee is also sought by other authorities.) In *Saylor* v. *U.S. Board of Parole,* 345 F.2d 100, 103 (D.C. Cir. 1965), the court endorsed such a procedure, stating that ''* * * upon arresting a federal parolee as a parole violator, the federal authorities should have some reasonable time and latitude in deciding whether to return him to the federal institution to serve the balance of his term or to surrender him to the local authorities for state prosecution.'' In the Commission's view, a 72-hour period is a reasonable time for a decision to yield jurisdiction to local prosecuting authorities.

Finally, in all cases in which parolees are arrested on Commission warrants, it is the Commission's intent that their revocation hearings be held at the D.C. jail whenever feasible. For those parole violators who have been convicted and sentenced to new prison terms in other institutions, the Commission proposes to follow existing federal policy with regard to the holding of dispositional revocation hearings prior to the completion of the intervening sentence, and revocation hearings following release from the intervening sentence. See 28 CFR 2.47. In all respects, the proposed rules have been drafted to conform to District of Columbia law regarding the parole revocation process. See D.C. Code 24–205 and 24–206.

### Proposed Implementation

The Commission proposes that the regulations set forth below be made effective as interim rules on August 5, 2000, with a further period for public comment. The Commission proposes to reevaluate the rules in the light of both public comment and operational experience before adopting final rules.

*Regulatory Assessment Requirements*

The U.S. Parole Commission has determined that this proposed rule would not be a significant rule within the meaning of Executive Order 12866. The proposed rule would not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that will not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

### The Proposed Rules

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR Part 2.

## PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. By adding §§ 2.91 through 2.105 to Subpart C to read as follows:

* * * * *

### Subpart C—District of Columbia Code Prisoners and Parolees

Sec.
2.91 Supervision responsibility.
2.92 Jurisdiction of the Commission.
2.93 Travel approval.
2.94 Supervision reports to Commission.
2.95 Release from active supervision.
2.96 Order of release.
2.97 Withdrawal of order of release.
2.98 Summons to appear or warrant for retaking of parolee.
2.99 Execution of warrant and service of summons.
2.100 Warrant placed as detainer and dispositional review.
2.101 Revocation: Preliminary interview.
2.102 Place of revocation hearing.
2.103 Revocation hearing procedure.
2.104 Issuance of subpoena for appearance of witnesses or production of documents.
2.105 Revocation decisions.

## Subpart C—District of Columbia Code Prisoners and Parolees

* * * * *

### § 2.91 Supervision responsibility.

(a) Pursuant to D.C. Code 24–1233(c), the District of Columbia Court Services and Offender Supervision Agency (CSOSA) shall provide supervision, through qualified Community Supervision Officers, for all D.C. Code parolees and mandatory releasees under the jurisdiction of the Commission who are released to the D.C. metropolitan area. Individuals under the jurisdiction of the Commission who are released to districts outside the D.C. metropolitan area, or who are serving mixed U.S. and D.C. Code sentences, shall be supervised by a U.S. Probation Officer pursuant to 18 U.S.C. 3655.

(b) A parolee or mandatory releasee may be transferred to a new district of supervision with the permission of the supervision offices of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

### § 2.92 Jurisdiction of the Commission.

(a) Pursuant to D.C. Code 24–431(a), the jurisdiction of the Commission over a parolee shall expire on the date of expiration of the maximum term or terms for which he was sentenced, subject to the provisions of this subpart relating to warrant issuance, time in absconder status, and the forfeiture of credit for time on parole in the case of revocation.

(b) The parole of any parolee shall run concurrently with the period of parole, probation, or supervised release under any other Federal, State, or local sentence.

(c) Upon the expiration of the parolee's maximum term as specified in the release certificate, the Community Supervision Officer shall issue a certificate of discharge to such parolee and to such other agencies as may be appropriate.

(d) A termination of parole pursuant to an order of revocation shall not affect the Commission's jurisdiction to grant and enforce any further periods of parole, up to the expiration of the offender's maximum term.

### § 2.93 Travel approval.

(a) The Community Supervision Officer may approve travel outside the district of supervision without approval of the Commission in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district, and vacation travel outside the district of supervision exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Commission prohibiting certain travel shall apply instead of any general rules relating to travel as set forth in paragraph (a) of this section.

(d) The district of supervision for a parolee under the supervision of the D.C. Community Supervision Office of CSOSA shall be the D.C. Metropolitan area (as defined in the certificate of parole) for all purposes of residence, employment, or travel permission under this section.

### § 2.94 Supervision reports to Commission.

An initial supervision report to confirm the satisfactory initial progress of the parolee shall be submitted to the Commission 90 days after the parolee's release from prison, by the officer responsible for the parolee's supervision. A regular supervision report shall be submitted to the Commission by the officer responsible for the supervision of the parolee after the completion of 12 months of continuous community supervision and annually thereafter. The supervision officer shall submit such additional reports and information concerning both the parolee, and the enforcement of the conditions of the parolee's supervision, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

### § 2.95 Release from active supervision.

(a) The Commission, in its discretion, may release a parolee or mandatory releasee from further supervision prior to the expiration of the maximum term or terms for which he or she was sentenced.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review shall also be conducted whenever release from supervision is specially recommended by the Community Supervision Officer.

(c) In determining whether to grant release from supervision, the Commission shall apply the following guidelines, provided that case-specific factors do not indicate a need for continued supervision:

(1) For a parolee originally classified in the very good risk category and whose current offense did not involve violence, release from supervision may be ordered after two continuous years of incident-free parole in the community;

(2) For a parolee originally classified in the very good risk category and whose current offense involved violence other than high level violence, release from supervision may be ordered after three continuous years of incident-free parole in the community;

(3) For a parolee originally classified in the very good risk category and whose current offense involved high level violence (without death of victim resulting), release from supervision may be ordered after four continuous years of incident-free parole in the community;

(4) For a parolee originally classified in other than the very good risk category, whose current offense did not involve violence, and whose prior record includes not more than one episode of felony violence, release from supervision may be ordered after three

continuous years of incident-free parole in the community;

(5) For a parolee originally classified in other than the very good risk category, and whose current offense involved violence other than high level violence, or whose prior record includes two or more episodes of felony violence, release from supervision may be ordered after four continuous years of incident-free parole in the community;

(6) For a parolee who was originally classified in other than the very good risk category and whose current offense or prior record involved high level violence (without death of victim resulting), release from supervision may be ordered after five continuous years of incident-free parole in the community;

(7) For any parolee whose current offense or prior record involved high level violence with death of victim resulting, release from supervision may be ordered only upon a case-specific finding that, by reason of age, infirmity, or other compelling factors, the parolee is unlikely to be a threat to the public safety.

(d) Decisions to release from supervision prior to completion of the periods specified in this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score (if originally classified in other than the very good risk category), or a less serious risk than indicated by a violent current offense or prior record (if any). However, release from supervision prior to the completion of two years of incident-free supervision will not be granted in any case unless case-specific factors clearly indicate that continued supervision would be counterproductive.

(e) Cases with pending criminal charge(s) shall not be released from supervision until the disposition of such charge(s) is known. The term ''incident-free'' parole shall include both any reported violations, and any arrest or law enforcement investigation that raises a reasonable doubt as to whether the parolee has been able to refrain from law violations while on parole.

**§ 2.96 Order of release.**

(a) When the Commission approves a recommendation for release from active supervision, a written order of release from supervision shall be issued and a copy thereof shall be delivered to the releasee.

(b) Each order of release shall state that the conditions of the releasee's parole are waived, except that it shall remain a condition that the releasee shall not violate any law or engage in any conduct which might bring discredit to the parole system, under penalty of possible withdrawal of the order of release or revocation of parole.

(c) An order of release from supervision shall not release the parolee from the custody of the Attorney General or from the jurisdiction of the Commission before the expiration of the term or terms being served.

**§ 2.97 Withdrawal of order of release.**

If, after an order of release from supervision has been issued by the Commission, and prior to the expiration date of the sentence(s) being served, the parolee commits any new criminal offense or engages in any conduct which might bring discredit to the parole system, the Commission may, in its discretion, do any of the following:

(a) Issue a warrant for the parolee's return to custody as a violator;

(b) Withdraw the order of release from supervision and return the parolee to active supervision; or

(c) Impose any special conditions to the order of release from supervision.

**§ 2.98 Summons to appear or warrant for retaking of parolee.**

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1)(i) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing; or

(ii) Issue a warrant for the apprehension and return of the offender to custody.

(2) A summons or warrant in paragraph (a)(1) of this section may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee who is charged with a criminal offense and who is awaiting disposition of such charge, issuance of a summons or warrant may be temporarily withheld, a warrant may be issued by the Commission and held in abeyance, a warrant may be issued by the Commission and a detainer lodged with the custodial authority, or a warrant may be issued for the retaking of the parolee.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms, except that in the case of a prisoner who has been mandatorily released from a sentence imposed for an offense committed before April 11, 1987, such summons or warrant may be issued only within the maximum term or terms less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—

(1) Placed in the mail; or

(2) Sent by electronic transmission to the appropriate law enforcement authority.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to the revocation of parole and the forfeiture of time pursuant to D.C. Code 24–206(a).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

**§ 2.99 Execution of warrant and service of summons.**

(a) Any officer of any Federal or District of Columbia correctional institution, or any Federal or District of Columbia officer authorized to serve criminal process, to whom a warrant is delivered shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to him a copy of the warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the Community Supervision Officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) If any other warrant for the arrest of the parolee has been executed or is outstanding at the time the Commission's warrant is executed, the

arresting officer may, within 72 hours of executing the warrant, release the parolee to such warrant and lodge the Commission's warrant as a detainer, voiding the execution thereof, if such action is consistent with the instructions of the Commission. In other cases, a parolee may be released from an executed but unwithdrawn warrant whenever the Commission finds such action necessary to serve the ends of justice.

(e) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons and the application therefor. Service shall be made by any Federal or District of Columbia officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the Commission.

(f) Official notification of the issuance of a Commission warrant shall authorize any law enforcement officer within the United States to hold the parolee in custody until the warrant can be executed in accordance with paragraph (a) of this section.

**§ 2.100 Warrant placed as detainer and dispositional review.**

(a) When a parolee is in the custody of other law enforcement authorities, or is serving a new sentence of imprisonment, a parole violation warrant may be lodged against him as a detainer.

(b) If the parolee is serving a new sentence of imprisonment and is eligible for parole under the Commission's jurisdiction, a dispositional revocation hearing shall be scheduled as soon as the parolee has applied for an initial hearing on the new sentence, or as soon as practicable if the parolee is serving a new sentence of one year or less. In such cases, the warrant shall not be executed except upon final order of the Commission. In any other cases, the detainer shall be reviewed on the record pursuant to paragraph (c) of this section.

(c) If the parolee is serving a new sentence of imprisonment that does not include eligibility for parole under the Commission's jurisdiction, the Commission shall review the detainer upon the request of the parolee. Following such review, the Commission may:

(1) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(2) Order a dispositional revocation hearing to be conducted by a hearing examiner or an official designated by the Commission at the institution in which the parolee is confined. In such case, the warrant shall not be executed except upon final order of the Commission.

(3) Let the detainer stand until the new sentence is completed. After the release of the parolee, and the consequent execution of the Commission's warrant, an institutional revocation hearing shall be conducted when the parolee is returned to federal custody.

(d) Dispositional revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Commission. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in § 2.105.

(1) The date the violation term commences is the date the Commission's warrant is executed. It shall be the policy of the Commission that the parolee's violation term (*i.e.,* the unexpired term that remained to be served at the time the parolee was released on parole) shall start to run only upon his release from the confinement portion of the sentence for the new offense, or the date of reparole granted pursuant to this subpart, whichever comes first.

(2) A parole violator whose parole is revoked shall be given recognition for all time in confinement for any new offense that is considered by the Commission as a basis for revocation for the limited purpose of satisfying the time ranges in the reparole guidelines at § 2.81. The computation of the prisoner's sentence, and forfeiture of all time on parole pursuant to D.C. Code 24–206(a), is not affected by such guideline credit.

**§ 2.101 Revocation: Preliminary interview.**

(a) *Interviewing officer.* A parolee who is retaken on a warrant issued by the Commission shall promptly be offered a preliminary interview by a Community Supervision Officer (or other official designated by the Commission). The purpose of the preliminary interview is to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a local or institutional revocation hearing should be conducted. Any Community Supervision Officer or U.S. Probation Officer in the district where the prisoner is confined may conduct the preliminary interview, provided he or she is not the officer who recommended that the warrant be issued.

(b) *Notice and opportunity to postpone interview.* At the beginning of the preliminary interview, the interviewing officer shall ascertain that the warrant application has been given to the parolee as required by § 2.99(b). The interviewing officer shall advise the parolee that he may have the preliminary interview postponed in order to obtain an attorney (and/or witnesses and evidence on his behalf), and that he may apply for counsel to be assigned by the D.C. Public Defender Service or otherwise obtained. In addition, the parolee may request the Commission to obtain the presence of adverse witnesses (*i.e.*, persons who have given information upon which revocation may be based). Such adverse witnesses may be requested to attend the postponed preliminary interview if the parolee meets the requirements for a local revocation hearing under § 2.102(a). The parolee shall be given advance notice of the time and place of a postponed preliminary interview.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the parolee and shall apprise the parolee of the evidence that has been presented to the Commission. The interviewing officer shall ascertain whether the parolee admits or denies each charge listed on the warrant application, as well as the parolee's explanation of the facts giving rise to each charge. The officer shall also receive the statements of any witnesses and documentary evidence on behalf of the parolee.

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with a recommended decision.

(1) If the interviewing officer's recommended decision is that there is no probable cause to believe that the parolee has violated the conditions of his release, a Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that there is probable cause to believe that the parolee has violated a condition (or

conditions) of his release, the Commissioner shall notify the parolee of the final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) *Release notwithstanding probable cause.* If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceedings may be ordered in the Commission's discretion if it determines that:

(i) Continuation of revocation proceedings is not warranted despite the violations found; or

(ii) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and the parolee is neither likely to fail to appear for further proceedings, nor constitutes a danger to himself or others.

(e) *Conviction as probable cause.* Conviction of any Federal, District of Columbia, State, or local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no preliminary interview shall be conducted unless ordered by a Commissioner to consider additional violation charges (including, but not limited to, unadjudicated criminal offenses) that may be determinative of the Commission's decision regarding revocation and/or reparole.

(f) *Local revocation hearing.* A postponed preliminary interview may be conducted as a local revocation hearing by an examiner or other officer designated by a Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing. It shall be the Commission's policy to conduct a combined preliminary interview and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

**§ 2.102 Place of revocation hearing.**

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with a full opportunity to contest the charges against him, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision;

(2) The parolee denies all charges against him; and

(3) The parolee shall also be given a local revocation hearing if he admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or reparole, and requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witness at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(b) If there are two or more charged violations, the hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits all the charged violations of the conditions of his release, or who is retaken following release from a sentence of imprisonment for a new crime, shall be given an institutional revocation hearing upon his return or recommitment to an institution. An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the parolee is being held. However, a Commissioner may, on his own motion, designate any case for a local revocation hearing. The difference in procedures between a ''local revocation hearing'' and an ''institutional revocation hearing'' is set forth in § 2.103.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Commission under § 2.101(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has provided otherwise.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement, or consents to a postponement, or by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by an examiner, hearing examiner panel, or other official designated by the Commission.

**§ 2.103 Revocation hearing procedure.**

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) At a local revocation hearing, the alleged violator may present both witnesses and documentary evidence in his behalf. At an institutional revocation hearing, the alleged violator may only present documentary evidence in his behalf, including statements taken from witnesses. At any hearing, the presiding hearing officer or examiner may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may, on the request of the alleged violator or on its own motion, require the attendance of adverse witnesses who have given statements upon which revocation may be based. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. A finding of good cause for the non-attendance of an adverse witness may be based on a significant possibility of harm to the witness, the witness not being reasonably available, and/or the availability of documentary evidence that is an adequate substitute for live testimony. Neither adverse nor favorable witnesses will be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at or before the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) An alleged violator may be represented by an attorney at either a local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for parolees.

**§ 2.104 Issuance of subpoena for appearance of witnesses or production of documents.**

(a)(1) If any person who has given information upon which revocation may

be based refuses, upon request by the Commission, to appear at a preliminary interview or local revocation hearing, the Commission may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of a Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, a Commissioner may, upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Such subpoenas may also be issued at the discretion of a Commissioner if deemed necessary for the orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district on which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt. 18 U.S.C. 4214 (1976).

**§ 2.105 Revocation decisions.**

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the parolee has violated one or more conditions of parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision, including where appropriate:

(i) Reprimand the parolee;

(ii) Modify the parolee's conditions of release; or

(iii) Refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether immediate reparole is warranted or whether parole should be terminated pursuant to D.C. Code 206(a), and the parolee returned to prison. If the parolee is returned to prison, the Commission shall also determine a presumptive release date pursuant to § 2.81.

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes.

(d) Pursuant to D.C. Code 24–206(a), a parolee whose parole is revoked by the Commission shall receive no credit toward his sentence for time spent on parole (including any time the parolee may have spent in confinement on other sentences prior to the execution of the Commission's warrant).

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). This exception from D.C. Code 24–206(a) does not apply to prisoners serving sentences under the D.C. Youth Rehabilitation Act, to which D.C. Code 24–206(a) is fully applicable.

(f) In determining whether to revoke parole for non-compliance with a condition requiring payment of a fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Dated: April 5, 2000.

**Michael J. Gaines,**

*Chairman, U.S. Parole Commission.*

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Thursday,
April 13, 2000

## Part IV

# General Services Administration

**41 CFR Parts 101–44 and 102–37**
**Donation of Surplus Personal Property; Proposed Rule**

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 101–44 and 102–37

**[FPMR Amendment H–]**

**RIN 3090–AH20**

### Donation of Surplus Personal Property

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration is revising the Federal Property Management Regulations (FPMR) by moving coverage on donation of surplus personal property into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

**DATES:** Send your written comments by June 12, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Send written comments to: Ms. Sharon A. Kiser, Regulatory Secretariat (MVRS), Federal Acquisition Policy Division, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

Send comments by e-mail to: RIN.3090–AH20@gsa.gov.

**FOR FURTHER INFORMATION CONTACT:** Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3846.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This proposed rule updates, streamlines, and clarifies FPMR part 101–44 and moves the part into the Federal Management Regulation (FMR). The proposed rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency must follow the language contained in both the question and its answer.

Proposed updates include:

1. The use of the same dollar thresholds for reporting overages and shortages of property, in addition to a shortened report period.

2. The removal of the 2-year limit for reimbursing State surplus property agencies from the sale of undistributed property.

3. The change of definition of ''museum.''

4. The reinstatement of a requirement that donee eligibility files be updated at 3-year intervals.

5. The approval of all Red Cross donations by GSA.

6. The shift in responsibility from GSA to the Federal Aviation Administration to issue screening credentials for public airports.

### B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

### C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there is no requirement that this proposed rule be published in the **Federal Register** for notice and comment.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB).

### E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Parts 101–44 and 102–37

Government property management, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 101 and 102 as follows:

**CHAPTER 101—[AMENDED]**

1. Part 101–44 is revised to read as follows:

## PART 101–44—DONATION OF SURPLUS PERSONAL PROPERTY

**Authority:** 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

**§ 101–44.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).**

For information on donation of surplus personal property previously contained in this part, see FMR part 37 (41 CFR part 102–37).

**CHAPTER 102—[AMENDED]**

2. Part 102–37 is added to subchapter B to read as follows:

## PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

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**Authority:** 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

## Subpart A—General Provisions

### § 102–37.5 What does this part cover?

This part covers the donation of surplus personal property located within a State, including foreign excess personal property returned for handling as surplus personal property.

### § 102–37.10 What is the primary governing authority for this part?

Subsection 203(j)(1) of the Federal Property and Administrative Services Act of 1949, as amended (the Property Act), gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

### § 102–37.15 Who must comply with the provisions of this part?

All executive agencies, State agencies for surplus property (SASPs), and donees must comply with this part.

### § 102–37.20 How do we request a deviation from these requirements and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

## Definitions

### § 102–37.25 What definitions apply to this part?

The following definitions apply to this part:

*Accredited* means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for universities, colleges, or secondary schools; or another recognized accrediting association.

*Approved* means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

*Cannibalization* means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

*Child care center* means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14, or as prescribed by State law, and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

*Clinic* means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

*College* means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

*Conservation* means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

*Donation screening period* means a period of time following the surplus release date during which surplus personal property may be determined to be usable and necessary for donation purposes.

*Donee* means:

(1) A service educational activity.

(2) A State, political subdivision thereof, or tax-supported organization therein acting on behalf of a public airport.

(3) A public agency using surplus personal property in carrying out or promoting one or more public purposes.

(4) An eligible nonprofit tax-exempt educational or public health institution or organization.

(5) A public or nonprofit program for older individuals.

*Drug abuse or alcohol treatment center* means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

*Economic development* means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

*Education* means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

*Educational institution* means an approved, accredited, or licensed public or nonprofit institution, facility, organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally disabled, school for the physically disabled, or an educational radio or television station.

*Educational radio station* means a radio station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes and which is public or nonprofit and tax exempt under section 501 of the Internal Revenue Code (26 U.S.C. 501).

*Educational television station* means a television station licensed by the Federal Communications Commission which operates exclusively for noncommercial educational purposes and which is public or nonprofit and tax exempt under section 501 of the Internal Revenue Code.

*Foreign excess personal property* means any excess personal property located outside a State.

*GSA* means the General Services Administration, acting by and through the Administrator of General Services or an official to whom functions under this part have been delegated by the Administrator of General Services.

*Health center* means an approved public or nonprofit facility that provides public health services, including related facilities such as diagnostic and laboratory facilities and clinics.

*Holding agency* means the executive agency having accountability for, and generally possession of, property.

*Homeless individual* means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) For purposes of this part, the term *homeless individual* does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

*Hospital* means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

*Library* means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

*Licensed* means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

*Medical institution* means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a *medical institution*.

*Museum* means a public or private nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term *museum* includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

*Nonappropriated fund property* means property acquired by religious or morale, welfare or recreational activities, post exchanges, ship stores, military officer or enlisted clubs, veterans' canteens, and similar activities with funds generated by Government employees and their dependents for operation of these activities. Such property is not Federal property.

*Nonprofit* means an entity not operated for profit that has been held by the Internal Revenue Service to be exempt from taxation under section 501 of the Internal Revenue Code.

*Parks and recreation* means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

*Program for older individuals* means any State or local government agency or any nonprofit tax-exempt activity that receives funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 *et seq.*), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 *et seq.*) and the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*).

*Property Act* means the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (codified as amended in scattered sections of 40 U.S.C. and 41 U.S.C.), the law that centralized Federal property management and disposal functions under the GSA.

*Provider of assistance to homeless individuals* means a public agency or a nonprofit, tax-exempt institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals.

*Provider of assistance to impoverished families and individuals* means a public or private, nonprofit tax-exempt organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

*Public agency* means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

*Public health* means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

*Public health institution* means an approved, accredited, or licensed public or nonprofit institution, facility, or organization conducting a public health program(s) such as a hospital, clinic, health center, or medical institution, including research for such programs, the services of which are available to the public.

*Public purpose* means a program(s) carried out by a public agency that is legally authorized in accordance with

the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, and public safety.

*Public safety* means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

(1) Public police departments.

(2) Sheriffs' offices.

(3) The courts.

(4) Penal and correctional institutions (including juvenile facilities).

(5) State and local civil defense organizations.

(6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

*School (except schools for the mentally or physically disabled)* means a public or nonprofit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, that operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

*School for the mentally or physically disabled* means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

*Service educational activity (SEA)* means any educational activity designated by the Secretary of Defense as being of special interest to the armed forces; *e.g.,* maritime academies or military, naval, Air Force, or Coast Guard preparatory schools.

*State* means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

*State Agency for Surplus Property (SASP)* means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act.

*Surplus personal property (property)* means any excess personal property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator of General Services.

*Surplus release date* means the date on which Federal utilization screening of excess personal property has been completed, and the property is available for donation.

*University* means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

**The Donation Process**

**§ 102–37.30 When does property become surplus?**

Excess personal property becomes surplus at the close of business on the surplus release date. This is the point at which the excess screening period has been completed without transfer to a Federal agency or other eligible recipient.

**§ 102–37.35 Who handles the donation of property?**

(a) The General Services Administration has overall responsibility for executing the Government's property donation program and transfers most property to State agencies for surplus property (SASP), who in turn, distribute it to eligible donees in their States. The General Services Administration also returns to the American National Red Cross, by donation, such property as was originally derived from or through it.

(b) The Federal Aviation Administration (FAA), acting under delegation from the Department of Transportation, administers the program under which specified property is donated to States and tax-supported organizations for public airport use under 49 U.S.C. 47151. At FAA's request, GSA transfers specified property directly to specific public airport applicants.

(c) Donations to public bodies are made by holding agencies in accordance with subpart H of this part.

**§ 102–37.40 What type of property is available for donation?**

All property (including property in working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for the following categories:

(a) Surplus agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling to assist him in carrying out his responsibilities with respect to price support or stabilization.

(b) Property in trust funds.

(c) Nonappropriated fund property.

(d) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.

(e) Surplus vessels of 1500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use.

(f) Records of the Federal Government.

(g) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).

(h) Controlled substances.

(i) Items as may be specified from time to time by the Administrator of General Services.

**§ 102–37.45 Are exchange/sale items eligible for donation?**

No, exchange/sale items are not eligible for donation (see part 101–46 of this title).

**§ 102–37.50 How long is property available for donation purposes?**

Unless otherwise agreed to by the holding agency and GSA, authorized screeners have:

(a) Twenty-one calendar days following the surplus release date to screen property for donation purposes; and

(b) Ten calendar days to screen foreign excess personal property that is not required for further Federal use.

**§ 102–37.55 Is there a special form to request or transfer property?**

Yes, requests from SASPs and public airports must be submitted on a Standard Form (SF) 123, Transfer Order Surplus Personal Property. Alternatively, submission of such information in electronic format must be as specified and approved by GSA. GSA may require additional information to support and justify a donation request.

**§ 102–37.60 Who pays for transportation and the costs incurred in packing, loading, or preparing the property for shipment?**

Direct costs that the holding agency incurs in packing, loading, or preparing the property for shipment must be borne

by the transferee (SASP or public airport receiving the property). Where such costs are incurred, they must be reimbursed promptly by the transferee upon appropriate billing, unless the holding agency waives the amount involved as being uneconomical or impractical to collect. Payment of all transportation costs must also be borne by the transferee.

**§ 102–37.65 What is the timeframe for removing property that has been approved for donation?**

The transferee or its agent must remove property within 15 calendar days from the date of notification of availability, unless otherwise coordinated with the holding agency. If the transferee decides prior to pickup or shipment that it cannot use the property, it must notify the GSA regional office that approved the donation request.

**§ 102–37.70 How should overages and shortages in shipments be handled?**

(a) If you are a SASP or public airport and you receive more or less property than approved on the SF 123, and the total acquisition cost of the line items involved is less than $500, annotate your receiving and inventory records to document the discrepancy. If the total acquisition cost is $500 or more, you must submit a shortage report, or a SF 123 in the case of an overage, to the GSA approving office and include the following information:

(1) Name and address of the holding agency.

(2) All pertinent GSA and holding agency control numbers, in addition to the SASP or public airport transfer order number.

(3) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

(b) Submit the SF 123 or shortage report to GSA, with a copy to the holding agency, within 30 calendar days of the date of transfer.

## Subpart B–GSA

**§ 102–37.75 What are GSA's responsibilities in the donation of property?**

GSA is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of property, GSA:

(a) Determines when property is surplus to the needs of the Government.

(b) Allocates and transfers property on a fair and equitable basis to SASPs for further distribution to eligible donees.

(c) Supervises the care and handling of property while it is in the custody of a SASP.

(d) Approves all transfers of property to public airports.

(e) Returns, by donation, property derived from or through the American National Red Cross.

(f) Approves, after consultation with the holding agency, foreign excess personal property to be returned to the United States for donation purposes.

(g) Coordinates and controls the level of donee screening activity at Federal installations.

(h) Imposes appropriate conditions on the donation of property having characteristics that require special handling or use limitations.

(i) Keeps track of and reports to Congress on Federal donation programs.

**§ 102–37.80 What happens when GSA receives multiple requests for the same property?**

When requests for specific items of property are received from both a public airport and a SASP, GSA will exercise its discretion in determining where the property will provide the greatest public benefit. In case of two or more requests from SASPs, GSA will use the allocating criteria in § 102–37.85.

**§ 102–37.85 What factors will GSA consider in allocating property among the States?**

GSA allocates property among the SASPs on a fair and equitable basis using the following factors (listed in order of importance):

(a) Extraordinary needs caused by disasters or emergency situations.

(b) Requests from the Department of Defense (DOD) for DOD-generated property to be allocated through a SASP for donation to a specific SEA.

(c) Need and usability of property, as reflected by requests from SASPs.

**Note to § 102–37.85(c):** Requests for property to be used as functional items will be given preference over cannibalization requests. GSA will give special consideration to requests transmitted through the SASPs by eligible donees for specific items of property.

(d) States in greatest need of the type of property to be allocated where the need is evidenced by a letter of justification.

(e) The quantity of property of the type under consideration which was previously allocated to or is potentially available to a SASP from a more advantageous source.

(f) Performance of a SASP in effecting prompt distribution of property to eligible donees.

(g) Equitable distribution based on the existing condition and the original acquisition cost of the property.

(h) Performance of a SASP in effecting timely pickup or removal of property approved for transfer.

(i) Equitable distribution based on the ratio of population and per capita income of each State.

**§ 102–37.90 What report is GSA required to compile concerning the donation program?**

Biennially, GSA must transmit to Congress and the Comptroller General of the United States a report containing:

(a) A full and independent evaluation of the operation of programs for the donation of Federal property;

(b) Statistical information on the amount of property approved for transfer to the SASPs and donated to eligible non-Federal organizations during each succeeding biennial period (and the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations); and

(c) Any necessary or desirable recommendations of GSA.

## Subpart C—Holding Agency

**§ 102–37.95 To whom do ''we'', ''you'', and their variants refer?**

Use of pronouns ''we'', ''you'', and their variants throughout this subpart refers to the executive agency that has accountability and custody of the surplus personal property.

**§ 102–37.100 What are our responsibilities in the donation of property?**

Your responsibilities in the donation of property are:

(a) Cooperating with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting property for donation. Upon reasonable request, you must make available to these agencies and their representatives information regarding the quantity, description, condition, and location of donable property in your inventory.

(b) Setting aside property upon notification that there is a potential donation requirement, and holding it from further disposal pending processing of the transfer document approved by GSA.

(c) Notifying and subsequently releasing property to the transferee (or the transferee's designated agent) upon receipt of a GSA-approved SF 123.

(d) Notifying the approving GSA regional office if the property is not removed within 15 calendar days after the transferee is notified of its availability. GSA will advise you of further disposal instructions.

(e) Performing and bearing the cost of care and handling of property pending its disposal, except as provided in § 102–37.105.

**§ 102–37.105 May we get reimbursement for our costs?**

You may recover from the transferee (SASP or public airport) direct costs you incurred incident to a donation, such as packing, handling, crating, and transportation expenses. No overhead or administrative costs are to be included in the billing.

**§ 102–37.110 May we donate property directly to eligible non-Federal recipients without going through GSA?**

No, you may not donate property directly to eligible non-Federal recipients unless you have statutory authority to do so. All such donations must be included on your annual report to GSA under § 101–43.4701(c) of this title.

**§ 102–37.115 What are some of the donations that don't require GSA's approval?**

The following donations do not require GSA's approval:

(a) Donations of condemned, obsolete, or other specified material under 10 U.S.C. 2572, 10 U.S.C. 7308, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a. However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 101–43 of this title.

(b) Donations to public bodies under subpart H of this part.

(c) Donations to small disadvantaged businesses under 13 CFR Part 124.

(d) Donation of law enforcement canines under 40 U.S.C. 484(r).

**§ 102–37.120 May we withdraw property for Federal use once it enters the donation cycle?**

Yes, with the prior approval of GSA, you may withdraw property that has been set aside or approved for donation, but not yet removed. You may withdraw property to meet emergency or critical requirements without prior approval of GSA, but you must notify GSA immediately of such actions. GSA will notify the SASP of any withdrawals of property that has been approved for donation.

**§ 102–37.125 May we recover property that has been picked up by a SASP?**

Yes, you may request, through GSA, property that is in the possession of a SASP. However, you will be responsible for reimbursing the SASP the costs of care and handling, including transportation costs, the SASP incurred in initially acquiring the property.

## Subpart D—State Agency for Surplus Property

**§ 102–37.130 To whom do ''we'', ''you'', and their variants refer?**

Use of pronouns ''we'', ''you'', and their variants throughout this subpart refers to the SASP.

**§ 102–37.135 What are our responsibilities in the donation of property?**

Your responsibilities in the donation of property are to:

(a) Determine the eligibility of entities seeking to obtain Federal property as a:

(1) Public agency.

(2) Nonprofit educational or public health institution or organization.

(3) Program for older individuals.

(b) Distribute property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

**§ 102–37.140 How do we become eligible to distribute property to donees?**

In order to receive transfers of donable property, you must:

(a) Have a GSA-approved State plan of operation; and

(b) Provide the certifications and agreements as set forth in §§ 102–37.145 and 102–37.150.

### Certifications and Agreements

**§ 102–37.145 What certifications must we make before acquiring property for distribution?**

Before acquiring property for distribution, you must certify that:

(a) You are the agency of the State designated under State law that has legal authority under subsection 203(j) of the Property Act and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed by:

(1) A public agency for one or more public purposes.

(2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code, for the purpose of education or public health (including research for any such purpose) within the State.

(3) An eligible nonprofit, tax-exempt activity for programs for older individuals.

(d) When property is picked up by or shipped to your SASP, you have adequate and available funds, facilities, and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA regulations, and that the property is usable and needed by the donee.

**§ 102–37.150 What other requirements must we fulfill before acquiring property for distribution?**

With respect to property picked up by or shipped to your SASP, you must agree to the following:

(a) You are granted the right to possession only. You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the Property Act and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property for use in performing your donation program functions only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see § 102–37.320) as an agent and authorized representative of an adjacent State with which you share a common boundary, you will:

(1) Make the certifications and agreements required in § 102–37.145 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of the property, and will comply with GSA regulations on nondiscrimination as set forth in part 101–6, subpart 101–6.2, and part 101–8 of this title.

#### § 102–37.155 Must we make a drug-free workplace certification?

If you have a cooperative agreement with GSA that allows you to retain Federal property for SASP use, you must certify that you will provide a drug-free workplace as a condition for receiving such property. Drug-free workplace certification requirements are found at part 105–68, subpart 105–68.6, of this title.

#### § 102–37.160 Must we make a certification regarding lobbying?

You are subject to the anti-lobbying certification and disclosure requirements in part 105–69 of this title when all of the following conditions apply:

(a) You have entered into a cooperative agreement with GSA that provides for your SASP to retain donable Federal property for use in performing donation functions or any other cooperative agreement.

(b) The cooperative agreement was executed after December 23, 1989.

(c) The fair market value of the property requested under the cooperative agreement is more than $100,000.

### State Plan of Operation

#### § 102–37.165 What is a State plan of operation?

A State plan of operation is a document developed under State law and approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

#### § 102–37.170 Who is responsible for developing and submitting the plan?

The State legislature must develop the plan. The chief executive officer of the State must certify and submit the plan to GSA for acceptance and certify that you are authorized to acquire and distribute property to eligible donees in the State, to enter into cooperative agreements, and to undertake other actions and provide other assurances as are required by subsection 203(j)(4) of the Property Act and set forth in the plan. Send the plan to:

General Services Administration
Office of Transportation and Property Management (FB)
Washington, DC 20406

#### § 102–37.175 When does a State plan take effect?

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan conforms to the provisions of subsection 203(j)(4) of the Property Act and the requirements of this part and that allocation and transfer of donable surplus property to the State will begin.

#### § 102–37.180 Must GSA approve amendments or modifications to the plan?

Yes, GSA must approve amendments or modifications to the plan.

#### § 102–37.185 Do plans or amendments require public notice?

No plan of operation, and no major amendment to the plan, may be filed with GSA until 60 calendar days after general notice of the proposed plan or amendment has been published and interested persons have been given at least 30 calendar days to submit comments.

#### § 102–37.190 What happens if we don't operate in accordance with our plan?

If you don't operate in accordance with your plan, GSA may withhold allocation and transfer of surplus property until the nonconformance is corrected.

#### § 102–37.195 What must a State include in the plan of operation?

You must ensure the plan conforms to the provisions of subsection 203(j)(4) of the Property Act and includes the following information and assurances. (You may include in the plan other provisions not inconsistent with the purposes of the Property Act and the requirements of this part.):

STATE PLAN REQUIREMENTS

| Regarding— | The plan must— |
|---|---|
| (a) Designation of a SASP. | (1) Name the State agency that will be responsible for administering the plan.<br>(2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities.<br>(3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent. |
| (b) Operational authority. | (1) Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority. |

STATE PLAN REQUIREMENTS—Continued

| Regarding— | The plan must— |
|---|---|
| (c) Inventory control and accounting systems. ..... | (1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property.<br>(2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use.<br>(3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property. |
| (d) Return of donated property. ..... | (1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP, and:<br>(i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use.<br>(2) Specify that return of property can be accomplished by:<br>(i) Physical return to the SASP facility, if required by the SASP.<br>(ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP.<br>(iii) Disposal (by sale or other means) as directed by the SASP.<br>(3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction. |
| (e) Financing and service charges. ..... | (1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan.<br>(2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, crating, removal, and transportation. When the SASP provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the State plan must provide for minimal charges to be assessed in such cases and include the bases of computation.<br>(3) Provide that property made available to nonprofit providers of assistance to homeless individuals be distributed at a nominal cost for care and handling of the property.<br>(4) Set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds are to be used for the operation of the SASP and the benefit of participating donees.<br>(5) Affirm, if service charge funds are to be deposited or invested, that such deposits or investments are permitted by State law and set forth the types of depositories and/or investments contemplated.<br>(6) Cite State authority to use service charges to acquire or improve SASP facilities and set forth disposition to be made of any financial assets realized upon the sale or other disposal of the facilities.<br>(7) Indicate if the SASP intends to maintain a working capital reserve. If one is to be maintained, the plan should provide the provisions and limitations for it.<br>(8) State if refunds of service charges are to be made to donees when there is an excess in the SASP's working capital reserve and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner. |
| (f) Terms and conditions on donable property. ..... | (1) Require the SASP to impose terms, conditions, reservations, and restrictions on the donee for any item of donated property with a unit acquisition cost of $5,000 or more and any passenger motor vehicle. The specific terms, conditions, reservations, and restrictions that the SASP requires must be set forth in the plan. |

STATE PLAN REQUIREMENTS—Continued

| Regarding— | The plan must— |
|---|---|
| | (2) Provide that the SASP may impose reasonable terms, conditions, reservations, and restrictions on the use of other donated property. If the SASP elects to impose additional terms, conditions, reservations, and restrictions, it should list them in the plan. If the SASP wishes to provide for amending, modifying, or releasing any terms, conditions, reservations, or restrictions it has elected to impose, it must state in the plan the standards it will use to grant such amendments, modifications or releases.<br>(3) Provide that the SASP will impose on the donation of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property. |
| (g) Nonutilized or undistributed property. | (1) The plan must provide that, subject to GSA approval, property in the possession of the SASP which donees in the State cannot use will be disposed of by:<br>(i) Transfer to another SASP or Federal agency.<br>(ii) Sale.<br>(iii) Abandonment or destruction.<br>(iv) Other arrangements. |
| (h) Fair and equitable distribution. | (1) Provide that the SASP will make fair and equitable distribution of property to eligible donees in the State based on their relative needs and resources and ability to use the property.<br>(2) Set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution.<br>(3) Require that the SASP, insofar as practicable, select property requested by eligible donees and, if requested by the donee, arrange for shipment of the property directly to the donee. |
| (i) Eligibility. | (1) Set forth procedures for the SASP to determine the eligibility of applicants for the donation of surplus personal property.<br>(2) Provide for donee eligibility records to include at a minimum:<br>(i) Legal name and address of the donee.<br>(ii) Status of the donee as a public agency or as an eligible nonprofit, tax-exempt activity.<br>(iii) Details on the scope of the donee's program.<br>(iv) Proof of tax exemption under section 501 of the Internal Revenue Code if the donee is nonprofit.<br>(v) Proof that the donee is approved, accredited, or licensed if it is a requirement for operation of the donee's program(s); or certification of funding if the donee is a nonprofit activity that conducts programs for older individuals.<br>(vi) Financial resources.<br>(vii) Written designation of a representative(s) to act for the donee in acquiring property from the SASP signed by the chief administrative officer or by resolution of the donee's governing body.<br>(viii) Nondiscrimination assurance.<br>(ix) Types of property needed. |
| (j) Compliance and utilization. | (1) Provide that the SASP conduct utilization reviews for donee compliance with the terms, conditions, reservations, and restrictions imposed by GSA and the SASP on property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle.<br>(2) Provide for the reviews to include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property by GSA.<br>(3) Set forth the proposed frequency of such reviews and provide adequate assurances that the SASP will take effective action to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. |

STATE PLAN REQUIREMENTS—Continued

| Regarding— | The plan must— |
|---|---|
| | (4) Require the SASP to prepare reports on utilization reviews and compliance actions and provide assurance that the SASP will initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property. |
| (k) Consultation with advisory bodies and public and private groups.. | (1) Provide for consultation with advisory bodies and public and private groups which can assist the SASP in determining the relative needs and resources of donees, the proposed utilization of donable property by eligible donees, and how distribution of donable property can be effected to fill existing needs of donees.<br>(2) Provide details of how the SASP will accomplish such consultation. |
| (l) Audit. | (1) Provide for periodic internal audits of the operations and financial affairs of the SASP.<br>(2) Provide for compliance with the external audit requirements of Office of Management and Budget Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''(available at www.whitehouse.gov/OMB), and make provisions for the SASP to furnish GSA with:<br>(i) Two copies of any audit report made pursuant to the Circular, or with two copies of those sections that pertain to the Federal donation program.<br>(ii) An outline of all corrective actions and scheduled completion dates for the actions.<br>(3) Provide for cooperation in GSA or Comptroller General conducted audits. |
| (m) Cooperative agreements. | If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies:<br>(1) Affirm the SASP's intentions to enter into cooperative agreements.<br>(2) Cite the authority for entering into such agreements. |
| (n) Liquidation. | Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP. |
| (o) Forms. | Include copies of distribution documents used by the SASP. |
| (p) Records. | Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that:<br>(1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction.<br>(2) Records involving property with perpetual restriction must be retained in perpetuity.<br>(3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed. |

**§ 102–37.200 What steps must we take if the State decides to dissolve our SASP?**

If the State decides to dissolve your SASP, submit a liquidation plan that includes:

(a) Reasons for the liquidation;

(b) A schedule for liquidating the agency and the estimated date of termination;

(c) Method of disposing of property on hand under the requirements of this part;

(d) Method of disposing of the agency's physical and financial assets;

(e) Retention of all available records of the SASP for a 2-year period following liquidation; and

(f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

## Screening and Requesting Property

**§ 102–37.205 Do we need special authorization to screen property?**

Yes, you must have a valid screener-identification card (GSA Form 2946, Screener's Identification) prior to screening and freezing property at holding agencies. However, you and donee representatives do not need a screener-ID card to inspect, evaluate, or remove specific property approved for donation.

**§ 102–37.210 How do we obtain screener-ID cards for ourselves or donation?**

To obtain screening authorization you must:

(a) Submit a written request to the GSA regional office serving the area in which the intended screener is located. The request must state the name and address of your SASP or the donee the prospective screener represents, and certify that the applicant is qualified to screen as an authorized representative of the cited organization. A list of the Federal installations the screener will be authorized to visit must accompany

each request. The list of Federal installations should be limited to those within the applicable State, except where there are particular reasons why a screener should regularly visit installations outside the State.

(b) Accompany each request for authorization with a completed GSA Form 2946 that contains an affixed passport-style photograph of the prospective screener. Copies of the form are available from the GSA regional office servicing your State.

### § 102–37.215 May we request property that is in the sales cycle?

Yes, you may request property that is in the sales cycle if the property involved was not previously made available for donation or the property is needed to fill an emergency or critical requirement. You must submit such requests to GSA for consideration and coordination with the holding agency so that such action is not harmful to the overall outcome of the sale. Such requests may only be granted prior to sales award.

### § 102–37.220 May we request property specifically for cannibalization?

Yes; however, you must provide justification and include the following statement on the SF 123: ''Item(s) requested for cannibalization.'' Your request for cannibalization will be approved only when it is clear that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form.

## Eligibility of Donees

### § 102–37.225 Who may acquire property through a SASP?

You may distribute property to the following classes of donees:

(a) Public agencies.

(b) Nonprofit educational or public health institutions or organizations, such as:

(1) Medical institutions.

(2) Hospitals.

(3) Clinics.

(4) Health centers.

(5) Drug abuse or alcohol treatment centers.

(6) Providers of assistance to homeless individuals.

(7) Providers of assistance to impoverished families and individuals.

(8) Schools.

(9) Colleges.

(10) Universities.

(11) Schools for the mentally disabled.

(12) Schools for the physically disabled.

(13) Child care centers.

(14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.

(15) Museums attended by the public.

(16) Libraries, serving free all residents of a community, district, State or region.

(c) Public or nonprofit programs for older individuals.

(d) Service educational activities.

### § 102–37.230 Who determines if an activity is eligible to receive donated property?

(a) *Public agencies and nonprofit tax-exempt activities.* You determine if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or a program for older individuals under the requirements of this part. You may request GSA assistance or guidance in making such determinations.

(b) *Service educational activities (SEAs).* The Department of Defense (DOD) sets eligibility requirements for SEAs and makes eligibility determinations.

### § 102–37.235 Must we maintain eligibility records on SEAs?

Yes, you must maintain eligibility records on SEA's, but maintain them separately from your other eligibility files and make sure they include:

(a) Documentation verifying that the activity has been designated as eligible by DOD to receive surplus DOD property.

(b) A statement designating one or more donee representative(s) to act for the SEA in acquiring property.

(c) A listing of the types of property needed or authorized for use in the SEA's program.

### § 102–37.240 How often must we update donee eligibility records?

You must update donee eligibility records as needed, but no less than every 3 years, to ensure that all documentation supporting the donee's eligibility is current and accurate. Annually you must update files for programs whose eligibility depend on annual appropriations, annual licensing, or annual certification.

### § 102–37.245 What must we do if a donee fails to maintain its eligibility status?

If a donee fails to maintain its eligibility status, you must terminate distribution of property to the activity, recover any usable property still under Federal restriction, and take any other required compliance actions.

### § 102–37.250 May we grant eligibility to applicants who would otherwise qualify as eligible donees, but whose approval, accreditation, or licensing is pending?

You may grant conditional eligibility to those applicants whose programs are required to be approved, accredited, or licensed, but who are unable to obtain accreditation, approval, or licensing because they are newly organized or because the facilities in which their activities are to be housed are not yet constructed. If the construction of an applicant's facility or physical plant has not been completed, and after evaluating the progress and potential of the applicant, you may at your discretion make available property that can be immediately utilized at this point in the applicant's program. You may accept letters from public authorities, either local or State, that you deem competent (such as a board of health or a board of education) stating that the applicant otherwise meets the standards prescribed for approved, accredited or licensed institutions and organizations. Under no circumstances can the SASP grant conditional eligibility prior to receiving evidence of nonprofit status.

### § 102–37.255 Are we eligible to acquire property as a public agency donee?

No, you are not eligible to acquire property as a public agency donee, but you can retain surplus personal property for use in operating the donation program if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior GSA approval before using any donable property in your operation of the SASP. Make your needs known by submitting a listing of needed property to the appropriate GSA regional office for approval. GSA will review the list to ensure that it is of the type and quantity of property that is reasonably needed and useful in performing your SASP operations. Unless GSA disapproves the retention of the property within 30 calendar days of receipt of the listing, title to the property will vest in your SASP. You must maintain separate records for the property.

### § 102–37.260 What should we do if an applicant seeks an appeal of a negative determination of eligibility?

You should forward complete documentation on all appeal requests, including your comments and recommendations, to the applicable GSA regional office for review and coordination with GSA headquarters.

**Distributing Property**

**§ 102–37.265 Are there special requirements for distributing property to SEAs?**

Yes, only DOD-generated property may be donated to SEAs. Property generated by Federal civil agencies are not eligible for donation to SEAs, unless the SEAs also qualify under § 102–37.225(b) to receive donations of property. When donating DOD property to eligible SEAs, you must observe any restrictions the sponsoring Military Services may have imposed on the types of property the SEAs may receive.

**§ 102–37.270 May we distribute property to eligible donees of another State?**

Yes, you may distribute property to eligible donees of another State, if you and the other SASP determine that such an arrangement will be of mutual benefit to you and the donees concerned. Where such determinations are made, an interstate distribution cooperative agreement as prescribed in § 102–37.320 must be prepared and submitted to the appropriate GSA regional office for approval. When acting under an interstate distribution cooperative agreement, you must:

(a) Require the donee recipient to execute the distribution documents of its home SASP.

(b) Forward copies of executed distribution documents to the donee's home SASP.

**Terms and Conditions**

**§ 102–37.275 What terms and conditions must we impose on the donee?**

You must impose the terms and conditions on the donee required in your State plan of operation.

**§ 102–37.280 May we waive any of the terms and conditions of donation?**

You may alter or grant releases from State-imposed restrictions, provided your State plan of operation sets forth the standards by which such actions will be taken. You may not grant releases from, or amendments or corrections to:

(a) The statutory requirement that usable property be returned by the donee to the SASP if the property has not been placed in use for the purposes for which it was donated within one year of donation or ceases to be used by the donee for those purposes within one year of being placed in use, except that:

(1) You may grant authority to the donee to cannibalize property items subject to this requirement when you determine that such action will result in increased utilization of the property and that the proposed action meets the standards prescribed in your plan of operation with respect to amendments, modifications, or releases of the terms and conditions imposed on donated property; or

(2) You may, with the written concurrence of GSA, grant donees:

(i) A time extension to place property into use if the delay in putting the property into use was beyond the control and without the fault or negligence of the donee; or

(ii) Authority to trade in one donated item for one like item having similar use potential.

(b) The terms, conditions, reservations, and restrictions the Property Act requires you to impose on the use of passenger motor vehicles and any item of property having a unit acquisition cost of $5,000 or more.

(c) Any special handling condition or use limitation imposed by GSA, except with the prior written approval of GSA.

**§ 102–37.285 Do restrictions remain on property that has been authorized for cannibalization?**

Property authorized for cannibalization must remain under the period of restriction imposed by the transfer/distribution document pending completion of the proposed cannibalization. Components resulting from the cannibalization, which have a unit acquisition cost of $5,000 or more, must remain under the restrictions imposed by the transfer/distribution document. Components with a unit acquisition cost of less than $5,000 may be released upon cannibalization from the additional restrictions imposed by the State. However, these components must continue to be used or be otherwise disposed of in accordance with this part.

**§ 102–37.290 May a donee exchange donated property during the period of restriction?**

Yes, a donee may exchange donated property during the period of restriction with the approval of GSA. The donee must have used the donated item for its acquired purpose for a minimum of 6 months prior to being considered for exchange, and it must be demonstrated that the exchange will result in increased utilization value to the donee. As a condition of approval of the exchange, the item being exchanged cannot be in a noncompliance status. The item acquired by the donee must be:

(a) Made subject to the period of restriction remaining on the item exchanged.

(b) Of equal or greater value than the item exchanged.

**§ 102–37.295 On what categories of property has GSA imposed special handling conditions or use limitations?**

GSA has imposed special handling or processing requirements on the property categorized in this section. GSA may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed-or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit acquisition cost of $5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

| For— | See— |
|---|---|
| (1) Policies and procedures governing the donation of aircraft parts. | Part 101–37, subpart 101–37.6, of this title. |
| (2) Documentation needed by GSA to process requests for aircraft or vessels. | § 102–37.300. |
| (3) Special terms, conditions, and restrictions imposed on aircraft and vessels. | § 102–37.305. |
| (4) Guidelines on preparing plans of utilization for aircraft or vessels. | § 102–37.460. |

(b) *Tax-free alcohol or specially denatured alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, to acquire the property. You must include the BATF use-permit number on the SF 123.

(2) You may not store tax-free or specially denatured alcohol in your facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *M–151 vehicles.* M–151 vehicles have been identified as a hazard to the safety of public highway users, and eligible donees may not acquire these vehicles without mutilation. Mutilation must result in the unitized body of the vehicle being cut, crushed, or mangled in such a manner as to completely preclude rebuilding into a usable unitized body. When acquiring M–151 components and parts, the donee recipient must certify on the distribution document that the components and parts will not be reassembled as a vehicle for highway use.

(d) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101–42 of this title.

(e) *Franked and penalty envelopes and official letterheads.* Franked and penalty envelopes and official letterheads may not be donated without the SASP or donee certifying that all Federal Government markings will be obliterated before use.

### § 102–37.300 What documentation must we provide to acquire an aircraft or vessel?

The following documentation must be submitted to GSA, along with the SF 123, when you request an aircraft or vessel covered by § 102–37.295:

(a) A letter of intent, signed and dated by the authorized representative of the proposed donee setting forth a detailed plan of utilization for the property. (See § 102.37.460.)

(b) A letter, signed and dated by you, confirming and certifying the applicant's eligibility and containing an evaluation of the applicant's ability to use the aircraft or vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation;

(c) Your distribution document, signed and dated by the authorized donee representative; and

(d) A conditional transfer document, signed by you and the intended donee, and containing the special terms, conditions, and restrictions prescribed by GSA. The conditional transfer document may include additional terms, conditions, and restrictions imposed by you on the use of the aircraft or vessel that are consistent with any Federal requirements or your plan of operation. However, none of the Federal terms, conditions, and restrictions outlined in the executed conditional transfer document, including the requirement for an additional 48-month period of approved use, may be modified, amended, waived, released, or abrogated by you without the prior written approval of GSA.

### § 102–37.305 What are the special terms, conditions, and restrictions regarding aircraft and vessels?

(a) The aircraft or vessel must be placed in use for the purpose for which acquired no later than 12 months after acquisition and used for the same purpose for a 12-month period thereafter. There shall be an additional 48-month period of restriction which will expire after the aircraft or vessel has been used for the purpose for which acquired, except that the period of restriction for combat-configured aircraft (aircraft having no commercial flight application based upon their military design characteristics) runs in perpetuity.

(b) The donee of an aircraft must apply to the Federal Aviation Administration (FAA) for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee must provide you and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) and all the required documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by you and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms, conditions, and restrictions imposed by the conditional transfer document are breached, title and right to the possession of the aircraft or vessel will, at the option of GSA, revert to the United States Government. The donee, at the option of GSA, will be liable to the Government for the proceeds from any unauthorized disposal or for the fair market value or fair rental value of the aircraft or vessel at the time of any unauthorized transaction or use, as determined by GSA.

(e) If, during the period of restriction, the aircraft or vessel is no longer suitable, usable, or further needed by the donee for the purpose for which the donee acquires it, the donee must promptly notify you and request disposal instructions. You may not issue disposal instructions, except with the prior written concurrence of GSA.

(f) Combat-configured aircraft, as designated by DOD, may not be donated for flight purposes.

(g) For all aircraft donated for nonflight use, the donee must, within 30 calendar days of receipt of the aircraft, remove and turn over to you the manufacturer's data plate and the aircraft historical records (except the records of the major components/life limited parts; *e.g.,* engines, transmissions, rotor blades, etc., necessary to substantiate their reuse). You must send the records and data plate to GSA for forwarding to the FAA.

## Service and Handling Charges

### § 102–37.310 May we accept personal checks in payment of service charges?

No, you may accept payments only in the form of warrants, checks, or other official instruments drawn or issued by, and in the name of, the respective donee institution. If eligible donees have their operational expenses paid by a parent institution or organization, you may accept checks issued by such parent institutions in payment of the charges.

### § 102–37.315 Are there restrictions on how we may use service charge funds or other monies derived from donated Federal property?

Except as provided in § 102–37.360, you must use funds collected from service charges, or from other sources such as proceeds from sale of undistributed property or funds collected from compliance cases, solely for the operation of the SASP and the benefit of participating donees. Funds

may be deposited, invested, or used in accordance with State law to:

(a) Cover direct and indirect costs of your operation.

(b) Purchase necessary equipment for the SASP.

(c) Maintain a reasonable working capital reserve.

(d) Rehabilitate donable surplus property, including the purchase of replacement parts.

(e) Make refunds of service charges in excess of your working capital reserve to your participating donees.

(f) Acquire or improve office or distribution center facilities.

(g) Pay for the costs of internal and external audits.

**Cooperative Agreements**

**§ 102–37.320 What is a cooperative agreement?**

A cooperative agreement is an agreement you enter into with GSA or a Federal agency designated by GSA or another SASP for the use of property, facilities, personnel, or services to carry out the functions of the donation program. For example:

(a) You and GSA may cooperate under the terms of an agreement for the provision or use of property, facilities, personnel, or services to facilitate the allocation, transfer, and distribution of donable surplus property. After such an agreement is executed, GSA may assist you by:

(1) Helping you to enter into agreements with other designated Federal agencies for the use of property, facilities, personnel, or services as are necessary and useful in aiding you to carry out the functions of the donation program.

(2) Furnishing available office space and related support such as office furniture and information technology equipment to assist you in screening and processing property for donation.

(3) Permitting you to retain items of property transferred to you for distribution that are needed by you in performing your donation functions.

(b) With GSA's concurrence and where authorized by State law, you may enter into an interstate distribution cooperative agreement to act as an agent and authorized representative of an adjacent State with which you share a common boundary. Agreements may be considered when donees, because of their geographic proximity to the property distribution centers of the adjoining State, could be more efficiently and economically serviced by surplus property facilities in the adjacent State. You and the other SASP must agree to the payment or reimbursement of service charges by the donee and you also must agree to the requirements of § 102–37.150(e).

(c) You may enter into a cooperative agreement with GSA to conduct sales of nondonated or undistributed property for and on behalf of GSA.

**§ 102–37.325 Is there a fee for services and other support supplied under a cooperative agreement?**

Payment or reimbursement under a cooperative agreement will be a matter for resolution between you and the Federal agency. GSA will provide assistance, to the extent possible, without reimbursement. However, any extraordinary costs incurred in providing assistance will be on a reimbursable basis.

**§ 102–37.330 When may we terminate cooperative agreements?**

You may terminate a cooperative agreement with GSA upon a 60-calendar day written notice. For other authorized agreements, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

**Reports**

**§ 102–37.335 What reports must we provide to GSA?**

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in duplicate, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (Office of Management and Budget Control Number 3090–0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make such reports as GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

**Compliance and Audits**

**§ 102–37.340 What actions must we take to report damaged or missing property in our custody?**

You must immediately notify GSA and appropriate law officials of any damage to or loss of property in your custody due to theft, vandalism, or other unusual circumstances. You must inform GSA of any other type of damage to or loss of property in your custody.

**§ 102–37.345 What measures must we take to ensure that property is used for the purpose(s) for which donated?**

You must make utilization surveys and reviews, as provided in your plan of operation, to ensure that donees are using donated property during the period of restriction for the purposes for which it was acquired, including any special handling conditions or use limitations imposed by GSA or you. You must fully document your efforts and report all instances of noncompliance to GSA.

**§ 102–37.350 What actions must we take if a review or other information indicates noncompliance with donation terms and conditions?**

(a) Promptly investigate any suspected failure to comply with the conditions of donated property.

(b) Notify GSA immediately where there is evidence or allegations of fraud, nonuse, misuse, or unauthorized disposal of donated property.

(c) Temporarily defer any further donations of property where noncompliance allegations have been made and the donee is to be investigated, until such time as the investigation has been completed and a determination made that the allegations are either unfounded, or the allegations are substantiated, and the donee is proposed for suspension or debarment.

(d) Take action to correct the noncompliance or otherwise enforce the conditions imposed on use of the property if a donee is found to be in noncompliance. Such action may involve:

(1) Ensuring the property is used by the present donee for the purpose for which it was donated.

(2) Recovering the property from the donee for:

(i) Redistribution to another donee within the State;

(ii) Transfer through GSA to another SASP; or

(iii) Transfer through GSA to a Federal agency.

(3) Recovering fair market value or the proceeds of disposal in cases of unauthorized disposal or destruction.

(4) Recovering fair rental value for the time property was used in an unauthorized manner.

(5) Disposing of by public sale property no longer suitable, usable, or necessary for donation.

**§ 102–37.355 Must we coordinate with GSA on compliance actions?**

In enforcing compliance with the terms and conditions imposed on donated property, you must coordinate with GSA before undertaking the sale of, or making demand for payment of the

fair market value or fair rental value of donated property that:

(a) Is subject to any special handling condition or use limitation imposed by GSA; or

(b) Has not been placed into use by the donee, for the purposes for which it was donated, within one year of donation, or where the donee ceased using the property for authorized purposes during the one-year period after being placed in use.

**§ 102–37.360 How must we handle funds derived from compliance actions?**

You must handle funds derived from compliance actions as follows:

(a) *Federal restrictions.* You must promptly remit to GSA any funds derived from the enforcement of compliance involving a violation of any Federal restriction, for deposit in the Treasury of the United States. You must also submit any supporting documentation indicating the source of the funds and essential background information.

(b) *State restrictions.* You may retain any funds derived from a compliance action involving violation of any State-imposed restriction and use such funds as provided in your State plan of operation.

**§ 102–37.365 Does coverage under the Single Audit Act exempt us from other reviews of our program?**

No, although you are covered under the Single Audit Act (31 U.S.C. 7501–7507), from time to time the General Accounting Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State of the reasons for a GSA audit. You must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

## Disposing of Undistributed Property

**§ 102–37.370 When must we offer property to other SASPs?**

When you determine that property in your possession is usable, but not needed by eligible donees within your State, you must offer the property for transfer to other SASPs. You may arrange for representatives of other SASPs to visit your distribution facilities to inspect and select unneeded property. GSA encourages prompt transfer of property between the States, and will assist you, upon request, in making known to other SASPs undistributed property that is available for transfer.

**§ 102–37.375 Must GSA approve a transfer between SASPs?**

Yes, the requesting SASP must submit a SF 123, Transfer Order Surplus Personal Property, to the GSA regional office in which the releasing SASP is located. GSA then has 30 calendar days to approve or disapprove the request.

**§ 102–37.380 May we recover our costs if property is transferred to another SASP?**

You and the receiving SASP must mutually agree on the reimbursement of costs incurred by you in acquiring the property from the Federal government. If there is no agreement, GSA will determine appropriate reimbursement.

**§ 102–37.385 When should we report undistributed property to GSA?**

You should report at any time property in your possession that is not needed by you or another SASP to the GSA regional office for disposal instructions. You are encouraged, however, to promptly report any property that has been in your custody longer than a year, unless a predictable requirement exists for that property. When reporting property to GSA, provide:

(a) The best possible description of each line item of property, its current condition code, quantity, unit and total acquisition cost, State serial number, demilitarization code, and any special handling conditions;

(b) The date you received each line item of property listed; and

(c) Certification of reimbursement requested under § § 102–37.400 and 102–37.405.

**§ 102–37.390 May we sell undistributed property?**

Yes, you may sell undistributed property, provided you have a cooperative agreement with GSA to sell undistributed Federal property, and GSA approves your request to conduct a sale. Your request to sell property should include the proposed sale date, a listing of the property, location of the sale, method of sale, and proposed advertising to be used. If a request is approved, the GSA regional sales office will provide the necessary forms and instructions for you to use in conducting the sale.

**§ 102–37.395 Under what conditions may we abandon or destroy property?**

(a) You may abandon or destroy undistributed property when you determine that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The determination must be based on a finding made in writing by an authorized official of your agency and sent to the appropriate GSA regional office for approval. You must include in the written finding:

(1) The basis for the abandonment or destruction;

(2) A detailed description of the property, its condition, and total acquisition cost;

(3) The proposed method of destruction (burning, burying, etc.) or the abandonment location;

(4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health or safety and will not infringe on the rights of other persons;

(5) The signature of the SASP director requesting approval for the abandonment or destruction; and

(6) The title, telephone number, and signature of the SASP reviewing authority if a line item of the property to be disposed of at any one location at any one time has a known or estimated acquisition cost of more than $1,000.

(b) GSA will notify you within 30 calendar days whether you may proceed with the abandonment or destruction. GSA will provide alternate disposition instructions if your request for abandonment or destruction is disapproved.

**§ 102–37.400 May we get reimbursement if property is recovered for Federal use?**

(a) You may be reimbursed for the costs you incurred in acquiring the property, including packing, handling, and transportation costs, at the time the property is transferred to the Federal activity, except as noted in paragraph (b) of this section. GSA will secure agreement of the Federal agency to pay these charges prior to the release of the property, and annotate the amount of reimbursement on the transfer document.

(b) When the Federal Emergency Management Agency requests property for a presidentially declared emergency or major disaster, you are entitled to reimbursement of documented expenses originally incurred in the screening, transporting, and receipt of the property. You should coordinate and make arrangements for reimbursement with the State official in charge of disaster relief.

**§ 102–37.405 What costs may we recover if undistributed property is sold?**

When undistributed property is disposed of by public sale, GSA may authorize reimbursement for care and handling expenses you incurred in acquiring the property from within or outside a State. You must certify the costs incurred and support them with

documentation if requested by GSA. You will not be reimbursed for costs subsequent to the receipt of property, including unloading, moving, repairing, preserving, or storage. You will not be reimbursed for costs of transporting property to a location outside a SASP distribution facility for the purpose of a sale, unless GSA specifically requires transportation. Reimbursement may not exceed 50 percent of total sales proceeds and is limited to:

(a) Direct costs you initially paid to the Federal holding agency, including but not limited to packing, preparation for shipment, and loading; and

(b) Transportation costs you incurred, but were not reimbursed by a donee, for initially moving the property from the Federal holding agency to your distribution facility or other point of receipt.

## Subpart E—Donations to Public Agencies and Eligible Nonprofit Organizations

### § 102–37.410 To whom do ''we'', ''you'', and their variants refer?

Use of pronouns ''we'', ''you'', and their variants throughout this subpart refers to the donee.

### Eligibility

### § 102–37.415 Who determines if we are eligible to receive property?

If you are a public agency or a nonprofit tax-exempt activity, the SASP within your State determines if you are eligible as a public agency, nonprofit educational or public health institution, or a program for older individuals. If you offer courses of instruction devoted to the military arts and sciences, the Department of Defense will determine your eligibility to acquire property through the SASP as a service educational activity (SEA).

### § 102–37.420 What basic criteria must we meet to qualify for eligibility?

To qualify for eligibility:

(a) Your organization must conform to the definition of one of the categories of eligible entities listed in § 102–37.225 (see § 102–37.25 for definitions).

(b) You must be approved, accredited, or licensed if it is a requirement for operation of your program.

(c) You must be a public agency or nonprofit and tax-exempt under section 501 of the Internal Revenue Code.

(d) You must not be debarred, suspended, or excluded from any Federal procurement or nonprocurement program.

(e) Your program must operate or be conducted in compliance with applicable Federal nondiscrimination statutes.

### § 102–37.425 What if there is no specific authority that can approve or accredit our program as required for qualification?

In considering your eligibility, a SASP may accept letters from public authorities, either local or State, which it deems competent (such as a board of health or a board of education) stating that your organization meets the standards prescribed for approved or accredited institutions and organizations. Other documentation the SASP may accept as evidence of your approval include the following:

(a) In the case of educational activities, a SASP may deem letters from three accredited or State-approved institutions that students from your institution have been and are being accepted as sufficient evidence of your eligibility for the donation program. Or the SASP may consider you approved if you furnish evidence showing you meet the academic or instructional standards prescribed for public schools in the State; i.e., your organizational entity or program is devoted primarily to approved academic, vocational (including technical or occupational), or professional study and instruction, which operates primarily for educational purposes on a full-time basis for a minimum school year as prescribed by the State and employs a full-time staff of qualified instructors.

(b) In the case of public health institutions or organizations, a SASP may accept licensing as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of your institution.

(c) The awarding of research grants to your institution or organization by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization may also constitute approval of your institution or program, provided all other criteria are met.

### Terms and Conditions

### § 102–37.430 What certifications must we make before acquiring property?

Before you acquire property, you must certify that:

(a) You are a public agency or a nonprofit organization meeting the requirements of the Property Act and/or regulations of GSA.

(b) You are acquiring the property for your own use and will use the property for authorized purposes.

(c) You are not acquiring the property for any other use or purpose, for use outside the State, or for sale.

(d) Funds are available to pay all costs and charges incident to the donation.

(e) You will comply with the nondiscrimination regulations issued under title VI of the Civil Rights Act of 1964 (52 U.S.C. 2000d–2000d–4), section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

(f) You are not currently debarred, suspended, declared ineligible, or voluntarily excluded from receiving the property.

### § 102–37.435 What agreements must we make before acquiring property?

You must agree to the following conditions when acquiring property:

(a) The property is acquired on an ''as is, where is'' basis, without warranty of any kind, and you will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) You will return to the SASP, at your expense, any donated property that is not placed in use for the purposes for which it was donated within one year of donation, or which ceases to be used for such purposes within one year of being placed in use.

(c) You will comply with the terms, conditions, reservations, and restrictions, imposed by your SASP on the use of any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (If you are an SEA, this requirement does not apply to you.)

(d) You agree that upon execution of the SASP distribution document you have conditional title only to the property during the applicable period of restriction. Full title to the property will vest in you only after you have met all of the requirements of this part.

(e) You will comply with the terms, conditions, reservations, or restrictions imposed on any other donated item by the SASP. (Not applicable to SEAs.)

(f) You will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(g) You will use the property for an authorized purpose during the period of restriction (see § 101–37.440).

(h) You will obtain permission from the SASP before selling, trading, leasing,

loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(i) You will report to the SASP on the use, condition, and location of donated property, and on other pertinent matters as the SASP may require from time to time.

(j) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

#### § 102–37.440 May we use donated property for any purpose?

You may use donated property only for the following purposes:

(a) *Public purposes.* A public agency that acquires property through a SASP must use such property to carry out or to promote for the residents of a given political area one or more public purposes.

(b) *Educational and public health purposes.* A nonprofit educational or public health institution or organization must use property for purposes of education or public health, including research for any such purpose. While this does not preclude the use of donated property for a related or subsidiary purpose incident to the institution's overall program, the property must be used essentially for the primary educational or public health function for which the activity receives donable property and not for a nonrelated or commercial purpose.

(c) *Programs for older individuals.* Public and nonprofit programs for older individuals must use donated property to provide services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

#### § 102–37.445 May we acquire property for exchange?

No, you may not acquire property for exchange.

### Screening and Requesting Property

#### § 102–37.450 Do we need special authorization to screen property for our program(s)?

Yes, you must have a valid screener-identification card (GSA Form 2946) before screening and freezing property at holding agencies. However, you do not need a screener-ID card to inspect, evaluate, or remove specific property already set aside or approved for donation.

#### § 102–37.455 How do we obtain a screener-ID card?

To obtain screening authorization, you must ask your SASP to submit a written request to the GSA regional office serving the area in which you are located.

#### § 102–37.460 What type of information must we provide when requesting an aircraft or vessel?

Requests for donation of aircraft and vessels must be supported with a letter of intent, signed and dated by your authorized representative, that sets forth a detailed plan of utilization for the property. The letter of intent must provide the following information:

(a) A description of the aircraft or vessel requested. If an aircraft, the description must include the type, model or size, and the serial number, if known. If a vessel, it must include the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if known;

(b) A detailed description of your program and the number and types of aircraft or vessels you currently own;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often and for how long. If an aircraft is requested for flight purposes, you must specify a source of pilot(s) and where the aircraft will be housed. If an aircraft is requested for cannibalization, you must provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts, etc.) If a vessel is requested for waterway purposes, you must specify a source of pilot(s) and where the vessel will be docked. If a vessel is requested for permanent docking on water or land, you must provide details of the process, including the time to complete the process; and

(d) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting your need for the aircraft or vessel.

### Returns and Reimbursements

#### § 102–37.465 May we receive reimbursement for our donation expenses when we return property?

When you return unneeded property that is still under a period of restriction, and you have not breached any of the conditions or limitations, you may be reimbursed for the initial cost you incurred for repairs required to make the property usable if the property is transferred to a Federal agency or sold for the benefit and account of the U.S. Government. Your SASP must recommend for GSA approval the amount of reimbursement which you are requesting, taking into consideration the benefit you have received from the use of the property and making appropriate deductions for that use. In the case of sale, your reimbursement for any item of property may not exceed the proceeds of the sale of the item.

## Subpart F—Donations to Public Airports

#### § 102–37.470 To whom do ''we'', ''you'', and their variants refer?

Use of pronouns ''we'', ''you'', and their variants throughout this subpart refers to the Federal Aviation Administration (FAA).

#### § 102–37.475 What is the authority for public airport donations?

The authority for public airport donations is 49 U.S.C. 47151.

#### § 102–37.480 What are our responsibilities in the donation of property?

Your responsibilities in the donation of property are as follows:

(a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use (as defined in 49 U.S.C. 47102).

(b) Setting eligibility requirements for public airports and making determinations of eligibility.

(c) Certifying on the transfer document that property requested for donation is desirable or reasonably necessary to fulfill the immediate or foreseeable future requirements for developing, improving, operating, or maintaining a public airport, or needed for developing sources of revenue from non-aviation businesses at a public airport.

(d) Determining and enforcing compliance with the terms and conditions under which surplus personal property is transferred for public airport use.

(e) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

(1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.

(2) Maintaining a current record of screeners operating under your authority and making such records available to GSA upon request.

(3) Recovering any expired or invalid authorizations.

**§ 102–37.485 What information must we provide to GSA?**

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, you must:

(a) Provide copies of internal instructions that outline the scope of your oversight program for enforcing compliance with the terms and conditions of transfer.

(b) Report any compliance actions involving donations to public airports.

## Subpart G—Donations to the American National Red Cross

**§ 102–37.490 To whom do ''we'', ''you'', and their variants refer?**

Use of pronouns ''we'', ''you'', and their variants throughout this subpart refers to the Red Cross National Headquarters.

**§ 102–37.495 What is the authority for donations to the American National Red Cross?**

Subsection 203(l) of the Property Act authorizes donations, for charitable purposes, to the American National Red Cross.

**§ 102–37.500 What type of property may we receive?**

You may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials you processed, produced, or donated to a Federal agency.

**§ 102–37.505 What steps must we take to acquire property?**

Upon receipt of information from GSA regarding the availability of property for donation, you have 21 calendar days to inspect the property or request it without inspection. Include pickup, shipping or delivery instructions in your request.

**§ 102–37.510 What happens to property we don't request?**

Property you decline to request will be offered to SASPs for distribution to eligible donees. If the property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

## Subpart H—Donations to Public Bodies in Lieu of Abandonment/ Destruction

**§ 102–37.515 To whom do ''we'', ''you'', and their variants refer?**

Use of pronouns ''we'', ''you'', and their variants throughout this subpart refers to the holding agency.

**§ 102–37.520 What is a public body?**

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

**§ 102–37.525 What type of property is donable under this subpart?**

Only property you have assigned for abandonment or destruction (see guidelines in part 101–45, subpart 101–45.9, of this title) may be donated under this subpart. You may not donate property that requires destruction for health, safety, or security reasons. You must comply with all applicable laws and regulations and any special disposal requirements in part 101–42 of this title when disposing of hazardous materials and other dangerous property.

**§ 102–37.530 Is there a special form for processing donations?**

No, in processing donations you may use any document that meets your agency's needs for maintaining an audit trail of the transaction.

**§ 102–37.535 Who pays for costs associated with the donation?**

The recipient public body is responsible for paying the disposal costs incident to the donation, such as packing, preparation for shipment, demilitarization (the act of destroying the military offensive or defensive advantage inherent in certain types of property), loading, and transportation to its site.

Dated: March 24, 2000.

**G. Martin Wagner,**

*Associate Administrator for Governmentwide Policy.*

[FR Doc. 00–9001 Filed 4–12–00; 8:45 am]

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Federal Register

Thursday,
April 13, 2000

Part V

# Department of Education

## Life Skills for State and Local Prisoners Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.255A]**

### Life Skills for State and Local Prisoners Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

*Purpose of Program:* The Life Skills for State and Local Prisoners Program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

*Eligible Applicants:* The following entities are eligible for an award under this program:

(a) State or local correctional agencies.

(b) State or local correctional education agencies.

*Deadline for Transmittal of Applications:* May 30, 2000.

*Deadline for Intergovernmental Review:* July 31, 2000.

*Available Funds:* $4,750,000 for the first 12 months. Funding for the second and third 12 months is subject to availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

*Estimated Range of Awards:* $315,000—$475,000 (funding for first 12 months).

*Estimated Average Size of Awards:* $395,000.

*Estimated Number of Awards:* 10–15.

**Note:** The Department is not bound by any estimates in this notice.

*Project period:* Up to 36 months (3 twelve-month grant cycles).

*Page Limit:* The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 75 pages (including appendices) or 2,000 characters per page for the page limit specified, using the following standards:

- A page is 8.5 inches x 11 inches, on one side only, with 1-inch margins at the top, bottom, and both sides. For an electronic submission, a page equals 2,000 characters; and the Department of Education will convert any charts, tables, figures, and graphs from a page equivalency to a character count.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page and character count limits do not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information—Non-Construction Programs Form (ED 524), including the itemized budget; the other application forms; the assurances and certifications; or the table of contents, the text of the selection criteria within the narrative, the resumes, or the letters of support.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, 99, and the regulations for this program in 34 CFR Part 490.

#### Definitions

Applicants are encouraged to take particular note of the following definitions that are contained in 34 CFR 490.4:

''Life skills'' includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

''Local correctional agency'' means any agency of local government that provides corrections services to incarcerated adults.

''Local correctional education agency'' means any agency of local government, other than a local correctional agency, that provides educational services to incarcerated adults.

''State correctional agency'' means any agency of State government that provides corrections services to incarcerated adults.

''State correctional education agency'' means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

#### Invitational Priorities

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

*Invitational Priority #1*

Applications that demonstrate ways in which eligible entities and the private sector can effectively work together to assist students who are criminal offenders under the supervision of the justice system to attain the life skills they need to make a successful transition from correctional education programs to productive employment, including—

(a) Work experience or apprenticeship programs;

(b) Transitional worksite job training for students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible entity;

(c) Placement services in occupations that the students are preparing to enter;

(d) Where practical, projects that include activities that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(e) Employment-based learning programs.

*Invitational Priority #2*

Applications received from eligible entities, that establish or operate a life skills program for incarcerated adults within an Empowerment Zone, including a Supplemental Empowerment Zone (EZ), or an Enterprise Community (EC) designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture. The Department seeks to encourage eligible applicants within EZ/EC communities to apply for grants in this competition. A list of EZ/EC communities is included in this notice.

#### Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The program regulations in 34 CFR 490.20(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the reserved 15 points as follows:

Program Factors (34 CFR 490.21(a)). An additional ten points are added to

this criterion for a possible total of 25 points.

Evaluation Plan (34 CFR 490.21(d)). An additional five points are added to this criterion for a possible total of 20 points.

(a) *Program factors* (25 points). The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered; and

(2) Life skills education designed to prepare adult offenders to reintegrate successfully into communities, schools, and the workplace.

(b) *Educational significance* (15 points). The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of life skills;

(2) To use unique and innovative techniques to produce benefits that address life skills problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan* (20 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving life skills of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design.

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination* (10 points). The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel* (5 points).

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment* (5 points).

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact (SPOC), see the list included in this notice, or you may view the latest SPOC list on the OMB Web site at the following address:

http://www.whitehouse.gov/omb/grants.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department. Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.255A, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E200, Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

**Instructions for Transmittal of Applications**

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Pilot Project for Electronic Submission of Applications*

The U.S. Department of Education is conducting a limited pilot project of electronic submission of discretionary grant applications for selected programs. The Life Skills for State and Local Prisoners Program (CFDA 84.255A) is one of the programs included in the pilot project. If you are an applicant under the Life Skills for State and Local Prisoners Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in the e-GAPS pilot project. By participating you will have an opportunity to have input into the overall design and approach of e-GAPS. At the conclusion of the pilot project, we will evaluate its success and solicit suggestions for improvements.

If you participate as a grant applicant in an e-GAPS pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED Form No. 524), and all necessary assurances and certifications. We may request that you give us original signatures on forms at a later date.

You may access the electronic grant application for the Life Skills for State and Local Prisoners Program at:

http://e-grants.ed.gov

We have included additional information about the e-GAPS pilot project (see Parity Guidelines between Paper and Electronic Applications) in this notice.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) *If You Send Your Application by Mail:*

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.255A, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) *If You Deliver Your Application by Hand:*

You or your courier must hand deliver the original and two copies of the application by 4:30 P.M. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.255A, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 P.M. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) *If You Submit Your Application Electronically:*

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. till 12:00 midnight (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time).

*Notes:*

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application

receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424; revised January 12, 1999) the CFDA number—and suffix letter—of the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

**Application Instructions and Form**

To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (ED Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions.

*(Note:)*

ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL–A) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

e. An assurance that the applicant will report annually to the Secretary on the participation rate, cost, and effectiveness of the program and any other aspect of the program on which the Secretary may request information. (20 U.S.C. 1211–2(e)(2))

This notice contains all forms and instructions, including a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances, certifications, and required documentation, and additional information.

All applicants submitting hard copy applications must submit ONE original signed application, including ink signatures on all forms and assurances and ONE copy of the application. Please mark each application as original or copy.

No grant may be awarded unless a completed application form has been received.

**Instructions for Part III—Budget Narrative**

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

**Instructions for Part IV—Program Narrative**

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that—

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment of resources.

For Further Information Contact: Jennifer Arnold, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4529 Mary E. Switzer Building, Washington, D.C. 20202–7142, Telephone (202) 205–5621.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in this notice.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's Website (at http://www.ed.gov/). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Electronic Access to This Document**

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

*http://ocfo.ed.gov/fedreg.htm*
*http://www.ed.gov/news.html*

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

*http://www.access.gpo.gov/nara/index.html*

**Program Authority:** 20 U.S.C. 1211–2.

Dated: April 6, 2000.

**Robert D. Muller,**

*Acting Deputy Assistant Secretary for Vocational and Adult Education.*

**Instructions for Estimated Public Reporting Burden**

Under terms of the Paperwork Reduction Act of 1980, as amended, and

the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management Team, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, D.C. 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 3/31/2001)

**Parity Guidelines Between Paper and Electronic Applications**

The Department of Education is conducting a limited pilot project that allows applicants to use an Internet-based electronic system for submitting applications under selected discretionary grant programs. This competition is among those that have an electronic submission option available to all applicants. The system, called e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to the Department (us) electronically, using a current version of the applicant's Internet browser. To see e-GAPS visit the following address:

*http://e-grants.ed.gov*

Because we want to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-GAPS has an impact on all applicants under this competition.

E-GAPS is a data-driven system; that is, e-GAPS users will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

However, this pilot project is only the first step in the Department's eventual transition to electronic applications for grants. The pilot project is designed to enable us to evaluate the experience of gathering application data on-line. We will assess the on-line review process separately; so, during this pilot project, we will ultimately review in hard copy all information that we receive.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere voluntarily to the following guidelines:

- Use consistent font throughout your document, with no formatting of any kind (that is, no bolding, underlining, italics, or colored text).
- If you are preparing your application on a conventional typewriter, make sure that the pitch (characters per inch) of the font is consistent throughout your document, and do not use formatting of any kind (for example, underlining or italics).
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page or character count limitation. You should append charts, tables, graphs, and graphics of any kind after you have completed the text of the relevant section. We suggest that you begin these items on a separate sheet of paper and refer to them within the text.

*Example:*

1. Please describe your project management plan.

Our project plan is composed of three major components: start-up, fulfillment, and closure. The flow of these components into the stated outcomes for this project is described below and presented in figure 3–1.

- Create all illustrations (including charts, tables, graphs, and pictures) in grayscale only.
- Place a page number at the bottom right of each page beginning with *1*; and number your pages consecutively throughout your document.

At the top right of each page, place the name of the applicant, the applicant's DUNS number (if available), and the CFDA number of the competition.

**Additional Information**

*What Should I Know About ED Grants?*

*What Should I Know About ED Grants?* provides a non-technical summary of the Department of Education's discretionary grants process and the laws and regulations that govern it. An electronic copy of What Should I Know About ED Grants? is available at: *http://www.ed.gov/pubs/KnowAbtGrants/.*

To obtain a hard copy of *What Should I Know About ED Grants?,* please contact the Office of Correctional Education at: (202) 205–5621.

DUNS Number Instructions

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling 1–800–333–0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com/dbis/aboutdb/intlduns.htm.

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

Dun & Bradstreet, a global information services provider, has assigned D-U-N-S numbers to over 43 million companies worldwide.

Grant Application Receipt Acknowledgment

If you fail to receive the notification of application receipt within fifteen (15) days after the closing date, call: U.S. Department of Education, Coordination and Control Branch, (202) 708–9495.

Grant And Contract Funding Information

The Department of Education provides information about grant and contract opportunities through the internet: ED Internet Home Page, http://www.ed.gov/.

**Important Notice to Prospective Participants in U.S. Department of Education Contract and Grant Programs**

GRANTS

Applicants for grants from the U.S. Department of Education (ED) have to compete for limited funds. Deadlines assure all applicants that they will be treated fairly and equally, without last minute haste.

For these reasons, ED must set strict deadlines for grant applications. Prospective applicants can avoid disappointment if they understand that:

Failure to meet a deadline will mean that an applicant will be rejected without any consideration whatever.

The rules, including the deadline, for applying for each grant are published, individually, in the **Federal Register**. A one-year subscription to the Register may be obtained by sending $340.00 to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402–9371. (Send

check or money order only, no cash or stamps.)

The instructions in the **Federal Register** must be followed exactly. Do not accept any other advice you may receive. No ED employee is authorized to extend any deadline published in the Register. Questions regarding submission of applications may be addressed to: U.S. Department of Education, Application Control Center, Washington, D.C. 20202–4725.

CONTRACTS

Competitive procurement actions undertaken by the ED are governed by the Federal Procurement Regulation and implementing ED Procurement Regulation.

Generally, prospective competitive procurement actions are synopsized in the Commerce Business Daily (CBD). Prospective offerors are therein advised of the nature of the procurement and where to apply for copies of the Request for Proposals (RFP).

Offerors are advised to be guided solely by the contents of the CBD synopsis and the instructions contained in the RFP. Questions regarding the submission of offers should be addressed to the Contracts Specialist identified on the face page of the RFP.

Offers are judged in competition with others, and failure to conform with any substantive requirements of the RFP will result in rejection of the offer without any consideration whatever.

Do not accept any advice you receive that is contrary to instructions contained in either the CBD synopsis or the RFP. No ED employee is authorized to consider a proposal which is non-responsive to the RFP.

A subscription to the CBD is available for $208.00 per year via second class mailing or $261.00 per year via first class mailing. Information included in the Federal Acquisition Regulation is contained in Title 48, Code of Federal Regulations, Chapter 1 ($49.00). The foregoing publication may be obtained by sending your check or money order only, no cash or stamps, to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402–9371.

In an effort to be certain this important information is widely disseminated, this notice is being included in all ED mail to the public. You may therefore, receive more than one notice. If you do, we apologize for any annoyance it may cause you.

ED Form 5348, 8/92, Replaces ED Form 5348, 6/86 which is obsolete.

**GUIDANCE FOR PREPARING REQUIRED BREAKDOWN OF BUDGET CATEGORIES**

Personnel

For each staff member, please provide position, FTE, annual salary, and amount he or she will be paid for time devoted to grant. As explained in general information section, applicant must provide documentation of all other internal and external time commitments for each staff member.

Fringe Benefits

Please indicate the rate used to calculate fringe benefits for each staff person. Applicant must include a signed statement that rates are standard for that institution.

Travel

Please describe, for all staff travel, purpose, type of travel, who will be traveling, the number of days. Be as detailed as possible, including information as to costs for airfare (or mileage), lodging, food, and other expenses. Please also include all registration fees here.

Equipment

Equipment is defined in the Education Department General Administrative Regulations (EDGAR) as tangible, nonexpendable personal property including exempt property charged directly to the grant award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Applicants should also include in this category any materials required to run such equipment (peripherals, software, installation costs, etc.)

Supplies

These should be broken down by type, with a clear distinction made between those used for administrative purposes and those that will be used for instruction of students (indicate how many students will benefit). Must be tangible, thus services like printing should not be included here.

Contractual

If an outside entity has been procured through a competitive bid procedure to perform tasks, include here. Please indicate whether done by open bid or sole source justification. If service provider not selected competitively, include in ''Other'' category.

Other

Please include here all other costs (advertising, evaluation fees, printing, etc.). Applicant should indicate purpose of expenditure and how cost was calculated.

Indirect

These are costs involved in upkeep (utilities, employee services, etc.) that cannot be attributed to a specific objective. In order for an applicant to claim an indirect rate they must have a negotiated agreement with a Federal agency.

BILLING CODE 4000–01–U

# Application for Federal Education Assistance

**Note: If available, please provide application package on diskette and specify the file format.**

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

## Applicant Information

1. Name and Address
   Legal Name:_____
   Address:_____
   City _____ State _____ County _____ ZIP Code + 4 _____
   Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4 2 5 5 A → Title: Life Skills for State and Local Prisoners Program

5. Project Director:_____
   Address:_____
   City _____ State _____ ZIP Code + 4 _____
   Tel. #: ( ) _____ Fax #: ( ) _____
   E-Mail Address:_____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
   *(If "Yes," attach an explanation.)*

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐
   A State
   B County
   C Municipal
   D Township
   E Interstate
   F Intermunicipal
   G Special District
   H Independent School District
   I Public College or University
   J Private, Non-Profit College or University
   K Indian Tribe
   L Individual
   M Private, Profit-Making Organization
   N Other *(Specify)*:_____

8. Novice Applicant ☐ Yes ☐ No

## Application Information

9. Type of Submission:
   —*PreApplication*: ☐ Construction ☐ Non-Construction
   —*Application*: ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
    ☐ Yes *(Date made available to the Executive Order 12372 process for review):* __/__/__
    ☐ No *(If "No," check appropriate box below.)*
    ☐ Program is not covered by E.O. 12372.
    ☐ Program has not been selected by State for review.

11. Proposed Project Dates: **Start Date:** __/__/__ **End Date:** __/__/__

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
    a. If "Yes," Exemption(s) #:
    ***OR***
    b. Assurance of Compliance #:
    c. IRB approval date: _____ ☐ Full IRB **or** ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| **14a.** Federal | $ | .00 |
| **b.** Applicant | $ | .00 |
| **c.** State | $ | .00 |
| **d.** Local | $ | .00 |
| **e.** Other | $ | .00 |
| **f.** Program Income | $ | .00 |
| **g. TOTAL** | $_____ | .00 |

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

**a.** Typed Name of Authorized Representative

**b.** Title

**c.** Tel. #: ( ) _____ Fax #: ( ) _____

**d.** E-Mail Address:

**e. Signature of Authorized Representative** Date: __/__/__

REV. 11/12/99

ED 424

## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructionsin **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    **If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

# PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

## I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

## II. Information on Research Activities Involving Human Subjects

### A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

| U.S. DEPARTMENT OF EDUCATION<br>BUDGET INFORMATION<br>NON-CONSTRUCTION PROGRAMS | OMB Control Number: 1890-0004<br>Expiration Date: 02/28/2003 |
|---|---|
| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |

**SECTION A - BUDGET SUMMARY**
**U.S. DEPARTMENT OF EDUCATION FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

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| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |
|---|---|

**SECTION B - BUDGET SUMMARY**
**NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION** (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

# INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

**Standard Form 424B (Rev. 7-97) Back**

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| | |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| | |
| SIGNATURE | DATE |
| | |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | <br><br>**Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Registrant**<br>(*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*)<br>(*last name, first name, MI*): |
| **11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |
| **Federal Use Only:** | Authorized for Local Reproduction<br>Standard Form LLL (Rev. 7-97) |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

## EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES
(as of January 13, 1999)

EMPOWERMENT ZONES

**California:** Los Angeles, Oakland, Santa Ana, Riverside County*
**Connecticut**: New Haven+
**Florida**: Miami+
**Georgia**: Atlanta, Cordele*+
**Illinois**: Chicago, East St. Louis+, Ullin*
**Indiana**: Gary, East Chicago
**Kentucky**: Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
**Maryland**: Baltimore
**Massachusetts**: Boston+
**Michigan**: Detroit
**Minnesota**: Minneapolis+
**Mississippi**: Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
**Missouri/Kansas**: Kansas City, Kansas City
**Missouri**: St. Louis+
**New Jersey**: Cumberland County
**New York**: Harlem, Bronx
**North Dakota**: Lake Agassiz*
**Ohio**: Cleveland, Cincinnati, Columbus+
**Ohio/West Virginia**: Ironton/Huntington+
**Pennsylvania/New Jersey:** Philadephia/ Camden
**South Carolina**: Columbia/Sumter
**South Dakota**: Oglala Sioux Reservation in Pine Ridge*
**Tennessee**: Knoxville
**Texas**: Houston, El Paso+, Rio GrandeValley* (Cameron, Hidalgo, Starr, and Willacy Counties)
**Virginia**: Norfolk+/Portsmouth

ENTERPRISE COMMUNITIES

**Alabama**: Birmingham
**Alabama**: Chambers County* Greene County*, Sumter County*
**Alaska**: Juneau*
**Arizona**: Arizona Border* (Cochise, Santa Cruz and Yuma Counties), Phoenix, Window Rock*
**Arkansas**: East Central* (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County*, Pulaski County
**California**: Imperial County*, Los Angeles, Huntington Park, San Diego, San Francisco, Bayview, Hunter's Point, Watsonville*, Orange Cove*
**Colorado**: Denver
**Connecticut**: Bridgeport, New Haven
**Delaware**: Wilmington
**District of Columbia**: Washington
**Florida**: Jackson County*, Miami, Dade County, Tampa, Immokalee*
**Georgia**: Albany, Central Savannah River*(Burke, Hancock, Jefferson, McDuffie, Tallafero, and Warren Counties), Crisp County*, Dooley County*
**Hawaii:** Kaunakakai*
**Illinois**: East St. Louis, Springfield
**Indiana**: Indianapolis, Austin*
**Iowa**: Des Moines
**Kansas**: Leoti*
**Kentucky**: Louisville, Bowling Green*
**Louisiana**: Macon Ridge* (Catahoula, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Louisiana Delta* (Madison Parish), Ouachita Parish
**Maine:** Lewiston*
**Massachusetts**: Lowell, Springfield
**Michigan**: Five Cap*, Flint, Muskegon, Harrison*
**Minnesota**: Minneapolis, St. Paul
**Mississippi**: Jackson, North Delta Area* (Panola, Quitman, and Tallahatchie Counties)
**Missouri**: East Prairie*, St. Louis
**Montana**: Poplar*
**Nebraska**: Omaha
**Nevada**: Clarke County, Las Vegas
**New Hampshire**: Manchester
**New Jersey**: Newark
**New Mexico**: Albuquerque, La Jicarita* (Mora, Rio Arriba, Taos Counties), Deming*
**New York**: Albany, Schenectady, Troy
**New York**: Buffalo, Rochester
**New York**: Newburgh, Kingston
**North Carolina**: Charlotte
**North Carolina**: Edgecombe, Halifax, Robeson, Wilson Counties*
**Ohio**: Akron, Columbus, Greater Portsmouth* (Scioto County)
**Oklahoma**: Choctaw, McCurtain Counties*, Oklahoma City, Ada*
**Oregon:** Josephine County*, Portland
**Pennsylvania**: Harrisburg, Lock Haven*, Pittsburgh, Uniontown*
**Rhode Island**: Providence
**South Carolina**: Charleston, Williamsburg, Florence County*, Hallandale*
**South Dakota**: Beadle, Spink Counties*
**Tennessee**: Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
**Tennessee/Kentucky**: Scott, McCreary Counties*
**Texas**: Dallas, El Paso, San Antonio, Waco, Uvalde*
**Utah**: Ogden
**Vermont**: Burlington
**Virginia**: Accomack (Northampton County)*, Norfolk
**Washington**: Lower Yakima County*, Seattle, Tacoma, Collie*
**West Virginia**: Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
**Wisconsin**: Milwaukee, Keshena*

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* Denotes rural designee
+Also an Enterprise Community, Round One
For further information consult the following Internet site: http://www.ezec.gov

# State Single Points of Contact (SPOCs)

In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated SPOCs. Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

| | |
|---|---|
| **ARIZONA**<br>Joni Saad<br>Arizona State Clearinghouse<br>3800 N. Central Avenue<br>Fourteenth Floor<br>Phoenix, Arizona 85012<br>Telephone: (602) 280-1315<br>Fax: (602) 280-8144<br>jonis@ep.state.az.us | **ARKANSAS**<br>Tracy L. Copeland<br>Manager, State Clearinghouse<br>Office of Intergovernmental Services<br>Department of Finance and Administration<br>1515 W. 7th St., Room 412<br>Little Rock, Arkansas 72203<br>Telephone: (501) 682-1074<br>Fax: (501) 682-5206<br>tlcopeland@dfa.state.ar.us |
| **CALIFORNIA**<br>Grants Coordination<br>State Clearinghouse<br>Office of Planning and Research<br>P. O. Box 3044, Room 222<br>Sacramento, California 95812-3044<br>Telephone: (916) 445-0613<br>Fax: (916) 323-3018<br>state.clearinghouse@opr.ca.gov | **DELAWARE**<br>Charles H. Hopkins<br>Executive Department<br>Office of the Budget<br>540 S. Dupont Highway, 3rd Floor<br>Dover, Delaware 19901<br>Telephone: (302) 739-3323<br>Fax: (302) 739-5661<br>chopkins@state.de.us |
| **DISTRICT OF COLUMBIA**<br>Ron Seldon<br>Office of Grants Management and Development<br>717 14th Street, N.W. Suite 1200<br>Washington, D.C. 20005<br>Telephone: (202) 727-1705<br>Fax: (202) 727-1617<br>ogmd-ogmd@dcgov.org | **FLORIDA**<br>Cherie L. Trainor<br>Florida State Clearinghouse<br>Department of Community Affairs<br>2555 Shumard Oak Blvd.<br>Tallahassee, Florida 32399-2100<br>Telephone: (850) 922-5438<br>(850) 414-5495 (direct)<br>Fax: (850) 414-0479<br>cherie.trainor@dca.state.fl.us |
| **GEORGIA**<br>Georgia State Clearinghouse<br>270 Washington Street, SW<br>Atlanta, Georgia 30334<br>Telephone: (404) 656-3855<br>Fax: (404) 656-7901<br>gach@mail.opb.state.ga.us | **ILLINOIS**<br>Virginia Bova<br>Department of Commerce and Community Affairs<br>James R. Thompson Center<br>100 West Randolph, Suite 3-400<br>Chicago, Illinois 60601<br>Telephone: (312) 814-6028<br>Fax (312) 814-1800<br>vbova@commerce.state.il.us |
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Federal Register

Thursday,
April 13, 2000

Part VI

# Department of Health and Human Services

## Office of Public Health and Science

## Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Public Health and Science

### Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

**AGENCY:** Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

**ACTION:** Notice.

**SUMMARY:** The Office of Adolescent Pregnancy Programs (OAPP) requests applications for care demonstration grants under the Adolescent Family Life (AFL) Demonstration Projects Program. These Title XX grants are for community-based and community-supported demonstration projects to establish comprehensive and integrated approaches to the delivery of care services to pregnant adolescents, adolescent parents, their children, their extended family members, and their male partners.

Funds will be available for approximately 15–20 care demonstration projects, which may be located in any State, the District of Columbia, and United States territories, commonwealths and possessions.

**DATES:** The closing date for this grant announcement is May 30, 2000. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 am and 5:00 pm on or before the above closing date. Applicants which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

**ADDRESSES:** Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following INTERNET address: *www.dhhs.gov/progorg/opa.* If you do not have access to the INTERNET, you may obtain a kit from the Grants Management Office, Office of Populations Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594–5981. *All completed applications must be submitted to the Grants Management Office at the above mailing address. In preparing the application, it is important to follow ALL instructions contained in the application kit.*

**FOR FURTHER INFORMATION CONTACT:** The OAPP Program Office at (301) 594–4004. Staff is available to answer questions and provide limited technical assistance in the preparation of grant applications.

**SUPPLEMENTARY INFORMATION:** Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.,* authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent, parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide ''care services'' only (*i.e.,* services for the provision of care to pregnant adolescents, adolescent parents and their families); (2) projects which provide ''prevention services'' only (*i.e.,* services to prevent adolescent sexual relations); and (3) projects which provide a combination of care and prevention services.

Under this program announcement, OAPP intends to make available approximately $4 million to support an estimated 15–20 new care demonstration projects. The awards for care projects will range from $250,000 to $350,000.

Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship for Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

Applications are encouraged from experienced organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific services which may be funded under Title XX are listed below under the heading entitled **CARE SERVICES.**

The following application requirements contain information collections subject to OMB approval under Paperwork Reduction Act of 1995 (Pub. L. 104–13). These information collections have been approved by OMB under control number 0937–0198.

**Eligible Applicants**

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements.

**Youth Development Approach**

Socio-economic factors such as poverty, substandard housing, violence within a community, racial disparities, and gender inequality all contribute to early sexual activity and pregnancy. An adolescent's ability to plan for their future is hampered not only by their family's inability to meet basic needs, but also by the societal disparities that create unequal access to enrichment programs, job opportunities, support groups and mental health care, etc.

Adolescent health experts, public health officials, sociologists, and the medical community have long agreed that to effectively prevent secondary adolescent pregnancy among youth, Federal, state and local level programs must include multiple and complementary approaches to teen pregnancy prevention.

A more holistic approach to preventing secondary teen pregnancies is often termed ''youth development.'' It has been documented that successful youth development projects are those where adolescents themselves are an integral part of the design, implementation, and evaluation phases over the life of the project. Adolescents need to see hope for a future, acquire the skills necessary to turn hopes into reality, and be provided with an array of opportunities to get them to that reality.

The OAPP encourages applicants to take a youth development approach that works to address the societal disparities that contribute to repeat adolescent pregnancy and poor health outcomes for young mothers, their children, fathers and extended families. In addition, the OAPP encourages applicants to provide opportunities for improving the adolescents' senses of self through cultural understanding, sports and recreation,visual and performing arts, and other activities that build an adolescent's sense of self-worth and self-efficacy. All services provided by

AFL grantees, however, including all activities that are part of a youth development approach, must be within the scope of the Title XX care services listed below.

**Care Services**

Under this announcement, funds are available for local care demonstrations only. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families.

The OAPP encourages the submission of care applications which propose to do the following: (1) Add care services to supplement existing adolescent health services in school, hospital or other community settings, (2) provide care services to minority or other disadvantaged populations, (3) continue services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally, (4) stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training preparation and placement, (5) involve males and promote male responsibility, and (6) provide STD and HIV prevention counseling. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care projects are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling:

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of STDs, including HIV/AIDS;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of partents as the providers of sex education; and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate education and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services; and

(10) Counseling and referral for family services.

**Note:** Funds provided under Title XX may not be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community. In accordance with section, 2006(a)(17) of the Title XX (42 U.S.C. 300z-5(a)917)), applicants must make maximum use of services 2006(a)(17) of Title XX (42 U.S.C. 300z-5(a)(17)), applicants must make maximum use of services available under the Title X Family Planning Program in providing this required core service.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care of maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

**Evaluation**

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. Waivers above the five percent limit on evaluation may be granted in cases where a more rigorous or comprehensive evaluation effort is proposed (*see* sec. 2006(b)(1)). As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding

Section 2006(b)(2) of Title XX requires that the evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will assist in providing monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the program goals and objectives of the intervention, identification of the variables to be measured, a clear and organized timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis strategies. Additionally, it is also important to establish this collaborative relationship between the applicant organization and the proposed evaluator early to ensure that the project's proposed goals and objectives and the evaluation are in full alignment with each other. The proposed evaluator should be included in program planning meetings to ensure that there is uniformity in the intended outcomes of the program.

**Application Requirements**

Applications must be submitted on the forms supplied (PHS 516 1–1, Revised 6/99) complete in the manner prescribed in the application kits provided by the OAPP. Incomplete applications will be returned to the applicant. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

**Additional Requirements**

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP.

To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC) Requirements).* Applicants under this announcement are subject to the review requirements of E.O. 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services and Activities.'' E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

**Application Consideration and Assessment**

Applications which are judged to be late, incomplete or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the application will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (30 points)

(2) The applicant's rationale for use of the proposed approach and its worth for testing and/or replication based upon its previous demonstration, review of the literature and/or evaluation findings. (20 points)

(3) The applicant's presentation of an appropriate project design, consistent with the requirements of Title XX, including a clear statement of goals and objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (30 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and the other factors in sec. 2005, including consideration of:

(1) The applicant's capacity to administer funds responsibly;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The population to be served;

(4) Youth and community commitment to and involvement in planning and implementation of the demonstration project;

(5) The organizational model(s) for delivery of service;

(6) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing adolescent health models;

(7) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: April 7, 2000.

**Denese O. Shervington,**

*Deputy Assistant Secretary for Population Affairs.*

[FR Doc. 00–9148 Filed 4–12–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT APRIL 13, 2000

**DEFENSE DEPARTMENT**

Acquisition regulations:
- Caribbean basin countries; published 4-13-00
- Foreign acquisition; published 4-13-00
- Indian organizations and Indian-owned economic enterprises, utilization; published 4-13-00
- Manufacturing technology program; published 4-13-00

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:
- Arizona; published 4-13-00
- Washington; published 4-13-00

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Fenhexamid; published 4-13-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Medical devices:
- Class III preamendment devices; lung water monitor, powered vaginal muscle sitmulator for therapeutic use, and stairclimbing wheelchair; published 4-13-00

Organization, functions, and authority delegations:
- Headquarters; published 4-13-00

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Drawbridge operations:
- Louisiana; published 3-29-00

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Seat belt use:
- State observational surveys; uniform criteria; published 3-14-00

**TREASURY DEPARTMENT**

Currency and foreign transactions; financial reporting and recordkeeping requirements:
- Bank Secrecy Act; implementation—
  - Money transmitters and money order and traveler's check issuers, sellers, and redeemers; suspicious transactions reporting requirement; published 3-14-00

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**Agricultural Marketing Service**

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- Livestock packers and products processors and importers; market reporting requirements; comments due by 4-17-00; published 3-17-00

Onions grown in—
- Texas; comments due by 4-17-00; published 2-16-00

Papayas grown in—
- Hawaii; comments due by 4-18-00; published 2-18-00

Perishable Agricultural Commodities Act; implementation:
- License and complaint filing fees increase; comments due by 4-17-00; published 2-15-00

Prunes (dried) produced in—
- California; comments due by 4-17-00; published 1-19-00

Spearmint oil produced in Far West; comments due by 4-17-00; published 2-17-00

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Animal welfare:
- Potentially dangerous animals; training and handling; policy statement; comments due by 4-18-00; published 2-18-00

Interstate transportation of animals and animal products (quarantine):
- Tuberculosis in cattle, bison, goats, and captive cervids—
  - State and zone designations; comments due by 4-21-00; published 3-7-00
  - State and zone designations; correction; comments due by 4-21-00; published 3-24-00

**AGRICULTURE DEPARTMENT**

**Food and Nutrition Service**

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- Women, infants, and children; special supplemental nutrition program—
  - Certification integrity; comments due by 4-20-00; published 1-21-00

**AGRICULTURE DEPARTMENT**

Import quotas and fees:
- Sugar-containing products; tariff-rate quota licensing; comments due by 4-17-00; published 3-17-00

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

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- Magnuson-Stevens Act provisions—
  - Atlantic herring; comments due by 4-21-00; published 3-7-00

**DEFENSE DEPARTMENT**

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**ENVIRONMENTAL PROTECTION AGENCY**

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- Interstate ozone transport reduction—
  - Nitrogen oxides emissions; stay of 8-hour portion of findings of significant contribution and rulemaking; comments due by 4-17-00; published 3-1-00

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-21-00; published 3-22-00
- Florida; comments due by 4-17-00; published 3-17-00
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- Oregon; comments due by 4-21-00; published 3-22-00

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  - Annual reporting requirements; comments due by 4-17-00; published 3-17-00
- Loan policies and operations—
  - Loans to designated parties; approval; comments due by 4-17-00; published 3-17-00

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- Incumbent local exchange carriers; depreciation requirements review; 1998 biennial regulatory review; comments due by 4-17-00; published 4-12-00

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- Arizona; comments due by 4-17-00; published 3-3-00
- California; comments due by 4-17-00; published 3-3-00
- Indiana; comments due by 4-17-00; published 3-3-00

**FEDERAL RESERVE SYSTEM**

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- Financial holding company requirements—
  - Elections by foreign banks, etc.; comments due by 4-17-00; published 3-21-00

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  - Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; comments due by 4-17-00; published 2-16-00

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  - Yellow-billed cuckoo; comments due by 4-17-00; published 2-17-00
  - Mountain yellow-legged frog; southern California distinct vertebrate population segment; comments due

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**Copyright Office, Library of Congress**

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**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

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**Internal Revenue Service**

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## 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 ''P L U S'' (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. 5/P.L. 106–182**

Senior Citizens' Freedom to Work Act of 2000 (Apr. 7, 2000; 114 Stat. 198)

**Last List April 10, 2000**

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