



# Federal Register

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- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
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  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** April 18, 2000, at 9:00 a.m.
- WHERE:** Conference Room, Suite 700  
Office of the Federal Register  
800 North Capitol Street, NW,  
Washington, DC  
(3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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Federal Register

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

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 6

#### Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2000 Tariff-Rate Quota Year

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2000 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

**EFFECTIVE DATE:** April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs

Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-1021 or telephone at (202) 720-9439.

**SUPPLEMENTARY INFORMATION:** The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20-6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Programs Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and in conjunction with the U.S. Customs Service monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the

amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2000 tariff-rate quota year.

#### List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Issued at Washington, D.C., the 10th day of April, 2000.

**Richard P. Warsack,**  
*Licensing Authority.*

Accordingly, 7 CFR Part 6 is amended as follows:

#### PART 6—IMPORT QUOTAS AND FEES

1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

**Authority:** Additional U.S. Notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97-258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103-465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

**BILLING CODE 3410-10-P**

## Appendices 1, 2 and 3 to Subpart--Dairy Tariff-Rate Import Quota Licensing

Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses;  
and Appendix 3, Designated Importer Licenses for Quota Year 2000

Article by Additional U.S. Note Number and Country of Origin  <u>NON-CHEESE ARTICLES</u>	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Butter (Note 6)	5,649,278	1,327,722		
EU-15	81,153	15,008		
New Zealand	124,709	25,884		
Other Countries	63,105	10,830		
Any Country	5,380,311	1,276,000		
Dried Skim Milk (Note 7)	600,076	4,660,924		
Australia	600,076			
Canada		219,565		
Any Country		4,441,359		
Dried Whole Milk (Note 8)	3,175	3,318,125		
New Zealand	3,175			
Any Country		3,318,125		
Dried Buttermilk/Whey (Note 12)	224,981			
Canada	161,161			
New Zealand	63,820			
Butter Substitutes containing over 45 percent of butterfat and/or butter oil (Note 14)		6,080,500		
Any Country		6,080,500		
<b>TOTAL: NON-CHEESE ARTICLES</b>	<b>6,477,510</b>	<b>15,387,271</b>		

Article by Additional U.S. Note Number and Country of Origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
<u>CHEESE ARTICLES</u>				
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter) (Note 16)	24,011,213	7,459,518	9,661,128	7,496,000
Argentina	7,690		92,310	
Australia	535,628	5,542	758,830	1,750,000
Canada	1,031,946	109,054		
Costa Rica				1,550,000
Czech Republic				200,000
EU-15	15,749,737	6,582,695	1,132,568	2,346,000
Of which Portugal is:	127,536	1,773	223,691	
Israel	79,696		593,304	
Iceland	294,000		29,000	
New Zealand	4,534,333	281,139	6,506,528	
Norway	124,982	25,018		
Poland	917,497	18,727		300,000
Slovak Republic				600,000
Switzerland	605,069	66,343	548,588	500,000
Uruguay				250,000
Other Countries	130,635	71,000		
Any Country		300,000		
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, Blue-mold cheese (Note 17)	2,321,553	159,447		430,000
Argentina	2,000			
EU-15	2,319,553	159,447		300,000
Chile				80,000
Czech Republic				50,000
Other Countries	1			

Article by Additional U.S. Note Number and Country of Origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
<u>CHEESE ARTICLES</u>				
Cheddar Cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	3,682,923	600,933	519,033	7,620,000
Australia	942,397	42,102	215,501	1,250,000
Chile				220,000
Czech Republic				50,000
EU-15	61,932	201,068		1,000,000
New Zealand	2,552,720	243,748	303,532	5,100,000
Other Countries	125,874	14,015		
Any Country		100,000		
American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	2,874,357	291,196	357,003	
Australia	839,370	41,628	119,002	
EU-15	190,758	163,242		
New Zealand	1,680,364	81,635	238,001	
Other Countries	163,865	4,691		
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (Note 20)	5,303,350	303,052		1,210,000
Argentina	119,003	5,997		110,000
Czech Republic				100,000
EU-15	5,044,628	244,372		1,000,000
Norway	114,318	52,682		
Other Countries	25,401	1		
Italian-type cheeses, made from cow's milk, (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya-not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Note 21)	6,545,306	975,241	795,517	5,165,000
Argentina	3,976,531	148,952	367,517	1,890,000
EU-15	2,555,775	826,225		700,000
Poland				1,325,000
Romania				500,000
Uruguay			428,000	750,000
Other Countries	13,000	64		

Article by Additional U.S. Note Number and Country of Origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
<u>CHEESE ARTICLES</u>				
Swiss or Emmenthaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (Note 22)	5,807,334	843,980	823,519	380,000
EU-15	4,398,632	753,362	393,006	380,000
Switzerland	1,333,942	85,545	430,513	
Other Countries	74,760	5,073		
Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat (except articles within the scope of other tariff- rate quotas provided for in this subchapter), and margarine cheese (Note 23)	3,858,505	566,403	1,050,000	
EU-15	3,689,429	560,571		
Israel			50,000	
New Zealand			1,000,000	
Poland	169,075	5,832		
Other Countries	1			
Swiss or Emmenthaler cheese with eye formation (Note 25)	18,327,694	3,969,637	9,557,945	2,620,000
Argentina	9,115		70,885	
Australia	209,698		290,302	
Canada			70,000	
Czech Republic				400,000
Hungary				800,000
EU-15	13,321,467	3,155,361	4,003,172	1,220,000
Iceland	149,999		150,001	
Israel	27,000			
Norway	3,206,405	448,905	3,227,690	
Switzerland	1,318,735	365,370	1,745,895	200,000
Other Countries	85,275	1		
<b>TOTAL: CHEESE ARTICLES</b>	<b>72,732,235</b>	<b>15,169,407</b>	<b>22,764,145</b>	<b>24,921,000</b>

[FR Doc. 00-9347 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-10-C

**DEPARTMENT OF JUSTICE****8 CFR Part 3****28 CFR Part 0**

[EOIR No. 126F; AG Order No. 2297-2000]

RIN 1125-AA28

**Executive Office for Immigration Review; Board of Immigration Appeals; 21 Board Members****AGENCY:** Executive Office for Immigration Review, Justice.**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations relating to the organization of the Executive Office for Immigration Review by adding to the Board of Immigration Appeals (Board) an additional Vice Chairman position and two Board Member positions, thereby expanding the Board to 21 permanent members. This rule also eliminates the position of Chief Attorney Examiner. These amendments are necessary to maintain an effective, efficient system of appellate adjudication in light of the Board's increasing caseload.

**EFFECTIVE DATE:** This final rule is effective April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305-0470.

**SUPPLEMENTARY INFORMATION:** This final rule expands the Board to 21 permanent members by adding one Vice Chairman position and two Board Member positions. This rule also eliminates the position of Chief Attorney Examiner in the organizational hierarchy of the Board. These changes are necessary to maintain an effective, efficient system of appellate adjudication in light of the Board's increasing caseload. This rule amends 8 CFR part 3 and 28 CFR part 0 to reflect these changes in the Board's organization.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not necessary because this rule relates to agency procedure and practice.

**Regulatory Flexibility Act**

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12866**

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 13132**

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. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 12988: Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305-0470.

**List of Subjects***8 CFR Part 3*

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

*28 CFR Part 0*

Authority delegations, (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, for the reasons set forth in the preamble, part 3 of chapter I of title 8 of the Code of Federal Regulations and part 0 of chapter I of title 28 of the Code of Federal Regulations are amended as follows:

**PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

1. The authority citation for 8 CFR part 3 continues to read as follows:

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103; 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002.

**Subpart A—Board of Immigration Appeals**

2. In § 3.1:

a. Amend paragraph (a)(1) by revising the second sentence.

b. Amend paragraph (a)(1) by removing the words "or the Chief Attorney Examiner" in the eleventh sentence.

c. Amend paragraph (a)(2) by revising the third sentence.

d. Amend paragraph (a)(2) by removing the last two sentences.

e. Amend paragraph (a)(4)(ii) by removing the words "Vice Chairman" and adding in their place the words "one of the Vice Chairmen" in the third sentence.

f. Amend paragraph (a)(4)(ii) by removing the words "Vice Chairman are both" and adding in their place the words "Vice Chairman are all" in the fourth and fifth sentences.

g. Amend paragraph (a)(4)(ii) by removing the words "the Vice Chairman" and adding in their place the words "one of the Vice Chairmen" in the sixth sentence.

The revisions read as follows:

**§ 3.1 General authorities.**

(a)(1) \* \* \* The Board shall consist of a Chairman, two Vice Chairmen, and eighteen other members. \* \* \*

(2) \* \* \* The Chairman shall be assisted in the performance of his duties by two Vice Chairmen.

\* \* \* \* \*

## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

3. The authority citation for 28 CFR part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519

### Subpart U—Executive Office for Immigration Review

4. Amend § 0.116 by revising the first sentence to read as follows:

#### § 0.116 Board of Immigration Appeals.

The Board of Immigration Appeals shall consist of a Chairman, two Vice Chairmen, and eighteen other members. \* \* \*

Dated: March 31, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–8653 Filed 4–13–00; 8:45 am]

BILLING CODE 4410–30–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 245

[INS No. 1825–97]

RIN 1115–AE25

#### Adjustment of Status for Certain Polish and Hungarian Parolees

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with changes, the interim rule the Immigration and Naturalization Service (Service) published in the **Federal Register** on May 23, 1997. The interim rule provided for the adjustment to lawful permanent resident status of certain alien parolees from Poland or Hungary who were paroled into the United States between November 1, 1989, and December 31, 1991, and established terms that enabled these individuals to apply for permanent resident status. This final rule responds to a comment the Service received by adding a list of the eligibility requirements for adjustment under this provision.

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

**FOR FURTHER INFORMATION CONTACT:** Michael Valverde, Program Analyst,

Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–3228.

#### SUPPLEMENTARY INFORMATION:

##### Background

*What Authority Provides for Adjustment of Status for Nationals From Poland or Hungary?*

Section 646 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, dated September 30, 1996, provides for the adjustment to lawful permanent resident status for certain nationals of Poland or Hungary who, after having been denied refugee status, were inspected and granted parole in the United States during the period beginning on November 1, 1989, and ending on December 31, 1991.

*How Did the Service Implement the Provisions of Section 646 of the IIRIRA?*

On May 23, 1997, the Service published an interim rule in the **Federal Register** at 62 FR 28314, which added § 245.12, to establish the procedures by which eligible aliens may obtain the benefits of section 646(b) of the IIRIRA. The public was given a 60-day period to comment on the interim rule.

*What Comments did the Service Receive?*

The Service received one written comment on the interim rule. The commenter noted the eligibility requirements for benefits, under section 646 of Public Law 104–208, were not stated in the Immigration and Nationality Act (Act). The commenter felt it was necessary to state the eligibility requirements for benefits in this rule for prospective applicants.

The Service agrees with the commenter that eligibility requirements for benefits, under section 646 of Public Law 104–208, are not stated in the Act. Accordingly, the Service has incorporated these statutory requirements into § 245.12(a)(3) and (4) of the final rule.

*What Other Changes to the Final Rule did the Service Make?*

The Service is also amending § 245.12 to reflect changes made by section 308 of the IIRIRA. Section 308 redesignated several sections of the Act, including section 232 of the Act regarding medical examinations. An applicant's medical examination must comply with § 232.1 and § 245.5 to meet the eligibility requirements for adjustment of status. Accordingly, the Service is amending § 245.12(a) by adding a reference to § 232.1. Section 245.12(a) in the interim

rule made reference to collecting information on Form I–643, Health and Human Services Statistical Data, as a part of the filing process. However, the reference to Form I–643 has been removed because it does not properly apply to applicants under section 646 of the IIRIRA, but rather to refugees.

##### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule affects individuals who are adjusting status to permanent resident.

##### Unfunded Mandates Reform Act of 1995

This rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

##### Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a “significant regulatory action” under Executive Order (E.O., 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget (OMB) has waived its review under section 6(a)(3)(A).

##### Executive Order 13132

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. Therefore, in accordance with section 6 of E.O. 13132, the Immigration and Naturalization Service has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988.

#### Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule have previously been approved for use by the OMB under provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

#### List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 245 which was published at 62 FR 28314 on May 23, 1997, is adopted as a final rule with the following changes:

#### PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

2. Section 245.12 is revised to read as follows:

#### § 245.12 What are the procedures for certain Polish and Hungarian parolees who are adjusting status to that of permanent resident under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996?

(a) *How do I apply for adjustment of status under this section?* (1) Each person applying for adjustment of status, under section 646(b) of Public Law 104–208, must file a completed Form I–485, Application to Register Permanent Residence or Adjust Status, with the correct filing fee, with the Service director having jurisdiction over the applicant's place of residence.

(2) The application must include Form G–325A, Biographic Information and the results of the medical

examination made according to § 232.1 of this chapter and § 245.5.

(3) The application must include evidence to show the applicant was a national of Poland or Hungary who, after being denied refugee status, was inspected and granted parole into the United States between November 1, 1989, and December 31, 1991.

(4) The applicant must have been physically present in the United States for at least 1 year before filing a Form I–485.

(5) After receiving the Form I–485, the adjudicating Service office will notify each applicant who is 14 years old or older of the time and location for the required fingerprinting.

(b) *How is my application for adjustment of status affected if I leave the United States while my application is still pending?* The departure from the United States by an applicant for adjustment of status must be considered an abandonment of the application, as provided in § 245.2(a)(4)(ii), unless the applicant was previously granted advance parole for such absence, and was reinspected on returning to the United States.

(c) *Which grounds for inadmissibility do not apply or can be waived?* The provisions of section 212(a) (4), (5), and (7)(A) of the Act will not apply to adjustment of status under § 245.12. In addition, the director may waive any other ground of inadmissibility except section 212(a)(2)(C) or 212(a)(3)(A), (B), (C), or (E) of the Act, for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

(d) *If my application for adjustment of status is approved under § 245.12, what date will be recorded as my admission to permanent residence?* On approval of the application for adjustment of status, the date of the applicant's admission to permanent resident status will be the date of the applicant's inspection and parole, as described in paragraph (a) of this section.

Dated: March 28, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00–9320 Filed 4–13–00; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99–NM–07–AD; Amendment 39–11685; AD 2000–07–29]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that currently requires a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. This amendment requires repetitive performance of the operational test. This amendment also limits the applicability to airplanes installed with certain FSOV's. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 4, 1998 (63 FR 40811, July 31, 1998).

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98-16-09, amendment 39-10685 (63 FR 40811, July 31, 1998), which is applicable to certain Airbus Model A300, A310, and A300-600 series airplanes, was published in the Federal Register on February 10, 2000 (65 FR 6563). The action proposed to continue to require a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. The action also proposed to require repetitive performance of the operational test. In addition, the action also proposed to limit the applicability to airplanes installed with certain FSOV's.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states no objection to the proposed rule. Another commenter states that it has no comment to the proposed rule.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 103 airplanes of U.S. registry that will be affected by this AD.

The operational test that is currently required by AD 98-16-09, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required test on U.S. operators is estimated to be \$60 per airplane, per test cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is

determined that this final rule does not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-10685 (63 FR 40811, July 31, 1998), and by adding a new airworthiness directive (AD), amendment 39-11685, to read as follows:

**2000-07-29 Airbus Industrie:** Amendment 39-11685. Docket 99-NM-07-AD. Supersedes AD 98-16-09, Amendment 39-10685.

**Applicability:** Model A300, A310, and A300-600 series airplanes; on which any fire shut-off valve (FSOV) having part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10) is installed; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of

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

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

To detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire, accomplish the following:

### Repetitive Operational Tests

(a) Within 600 flight hours after the effective date of this AD, perform an operational test of the 4 FSOV's on the airplane, in accordance with Airbus All Operator Telex (AOT) 29-22, dated November 24, 1997. If any FSOV fails the test, prior to further flight, replace the FSOV with a new or serviceable FSOV, in accordance with the AOT. Repeat the operational test thereafter at intervals not to exceed 600 flight hours.

### Spares

(b) As of the effective date of this AD, no person shall install an FSOV, part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10), on any airplane, unless a successful operational test has been performed in accordance with the requirements of this AD.

### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

### Special Flight Permits

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

### Incorporation by Reference

(e) The actions shall be done in accordance with Airbus All Operator Telex

(AOT) 29-22, dated November 24, 1997.

This incorporation by reference was approved previously by the Director of the Federal as of September 4, 1998 (63 FR 40811, July 31, 1998). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be

inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 98-356-259(B), dated September 9, 1998.

(f) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 7, 2000.

**Donald L. Rigglin,**

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

[FR Doc. 00-9246 Filed 4-13-00; 8:45 am]

**BILLING CODE** 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NM-82-AD; Amendment 39-11680; AD 2000-07-25]

RIN 2120-AA64

#### Airworthiness Directives; Gulfstream Model G-IV Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G-IV series airplanes. This action requires modification of the power feeder cable assemblies of the left and right engine alternators. This amendment is prompted by an incident of an in-flight engine fire on a Model G-IV series airplane due to chafing of the power feeder cable assembly of an engine alternator. The actions specified in this AD are intended to prevent interference and chafing between the alternator power feeder cables and adjacent structure, which could result in an electrical short circuit and consequent fire ignition source in the engine compartment.

**DATES:** Effective May 1, 2000.

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

Comments for inclusion in the Rules Docket must be received on or before June 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114,

Attention: Rules Docket No. 2000-NM-82-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Neil Berryman, Aerospace Engineer; ACE-118A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703-6098; fax (770) 703-6097.

**SUPPLEMENTARY INFORMATION:** The FAA has received a report indicating that an in-flight engine fire occurred on a Gulfstream Model G-IV series airplane. Inspection revealed that the fire was contained within the engine nacelle. Further investigation indicated the ignition source of the fire to be an alternator power feeder cable chafing against the Approach Idle Solenoid fuel line. Such chafing, if not corrected, could result in an electrical short circuit that could spark and ignite a fire in the engine compartment.

#### Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream IV Customer Bulletin No. 112, dated February 15, 2000, and Gulfstream IV Aircraft Service Change No. 410, dated February 11, 2000. The customer bulletin references the aircraft service change, which describes procedures for modification of the power feeder cable assemblies of the left and right engine alternators. Modification procedures include replacing the cables, rerouting the cables to ensure adequate clearance between the cables and adjacent structure, and ensuring that the cables are properly connected to the terminals and that torque values are within specified limits. Procedures also include installing additional brackets and clamps to secure the cables and eliminate slack in the cables.

#### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other Gulfstream Model G-IV series airplanes of the same type design, this AD is being issued to prevent interference and chafing between the alternator feeder cables and adjacent structure, which could result in an electrical short circuit and consequent fire ignition source in the engine compartment. This AD requires modifying the power feeder cable assemblies of the left and right engine alternators. The actions are required to be accomplished in accordance with the service information described previously.

#### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-82-AD." The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2000-07-25 Gulfstream Aerospace Corporation:** Amendment 39-11680. Docket 2000-NM-82-AD.

*Applicability:* Model G-IV series airplanes, serial numbers 1000 through 1404 inclusive; certificated in any category.

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

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

To prevent interference and chafing between the alternator power feeder cables and adjacent structure, which could result in an electrical short circuit and consequent fire ignition source in the engine compartment, accomplish the following:

#### Modification

(a) Within 150 total flight hours after the effective date of this AD, accomplish paragraphs (a)(1) or (a)(2) of this AD, as applicable, in accordance with Gulfstream IV Customer Bulletin No. 112, dated February 15, 2000, and Gulfstream IV Aircraft Service Change No. 410, dated February 11, 2000.

(1) For airplanes having serial numbers 1000 through 1384 inclusive: Accomplish paragraphs (a)(1)(i) and (a)(1)(ii) of this AD for the left and right engines, in accordance with Paragraphs B. and C. of the Modification Instructions of the aircraft service change.

(i) Replace the alternator power feeder cables with new cables, and reroute the cables.

(ii) Install additional brackets and clamps.

**Note 2:** On some airplanes, some of the actions described in the aircraft service change were accomplished prior to the effective date of this AD. On these airplanes, these actions are not required to be repeated, as allowed by the phrase, "unless accomplished previously." However, any action described in the aircraft service change that has not been accomplished on these airplanes must be accomplished in accordance with this paragraph.

(2) For airplanes having serial numbers 1385 through 1404 inclusive: Accomplish

paragraphs (a)(2)(i) and (a)(2)(ii) on the right engine in accordance with paragraph D. of the Modification Instructions of the aircraft service change.

(i) Install a bracket and spacer.

(ii) Reroute the alternator power feeder cables.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

### Special Flight Permits

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

### Incorporation by Reference

(d) The actions shall be done in accordance with Gulfstream IV Customer Bulletin No. 112, dated February 15, 2000; and Gulfstream IV Aircraft Service Change No. 410, dated February 11, 2000, as applicable. (NOTE: The issue date of Gulfstream IV Aircraft Service Change No. 410 is indicated only on the cover page of the document; no other page of this document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 1, 2000.

Issued in Renton, Washington, on April 5, 2000.

**Donald L. Riggan,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 00-8991 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-U**

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

[Docket No. 99-NM-369-AD; Amendment 39-11679; AD 2000-07-24]

RIN 2120-AA64

**Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires installation of new, improved bonding jumpers on the horizontal stabilizer. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure adequate electrical bonding between the horizontal and vertical stabilizers. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing, and result in damage to the hydraulic lines and consequent failure of the hydraulic systems.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series

airplanes was published in the **Federal Register** on February 4, 2000 (65 FR 5456). That action proposed to require installation of new, improved bonding jumpers on the horizontal stabilizer.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter states that it has partially completed the requirements, and plans to accomplish the remainder of the requirements of the AD.

**Conclusion**

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 129 Fokker Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$69 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$24,381, or \$189 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

2000-07-24 **Fokker Services B.V.:**  
Amendment 39-11679. Docket 99-NM-369-AD.

*Applicability:* All Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

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

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

To ensure adequate electrical bonding between the horizontal and vertical stabilizers, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100-23-032, dated September 22, 1999.

(1) On the left-hand side of the horizontal stabilizer, replace the existing bonding jumper on the horizontal stabilizer torsion box with a new, improved bonding jumper.

(2) On the right-hand side of the horizontal stabilizer, install a new, improved bonding jumper.

**Note 2:** Fokker Service Bulletin SBF100-23-032, dated September 22, 1999, references Fokker 70/100 Aircraft Maintenance Manual (AMM), Chapter 20-13-05, as an additional source of service information to accomplish the installation of the new bonding jumpers.

#### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

#### Special Flight Permits

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

#### Incorporation by Reference

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100-23-032, dated September 22, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Dutch airworthiness directive 1999-128(A), dated October 29, 1999.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 00-8990 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-321-AD; Amendment 39-11678; AD 2000-07-23]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier Model DHC-8-100 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC-8-100 series airplanes, that requires changing the power supply for the thunderstorm lights from the left secondary bus to the left essential bus. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a failure of the thunderstorm lights in the cockpit after loss of all generated electrical power. This condition could result in the cockpit instruments not being visible to the flight crew during certain emergency procedures, and consequent reduced controllability of the airplane.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Luciano Castracane, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7535; fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC-8-100 series airplanes was published in the **Federal Register** on January 14, 2000 (65 FR 2362). That action proposed to require changing the power supply for the thunderstorm lights from the left secondary bus to the left essential bus.

#### Comments

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

#### Conclusion

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

#### Cost Impact

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$306 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be \$4,374, or \$486 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**2000-07-23 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39-11678. Docket 99-NM-321-AD.

**Applicability:** Model DHC-8-100 series airplanes, serial numbers 003 through 020 inclusive; certificated in any category; except those on which Modification 8/0198 has been installed.

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

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

To prevent a failure of the thunderstorm lights in the cockpit after loss of all generated electrical power, which could result in the cockpit instruments not being visible to the flight crew during certain emergency procedures, and consequent reduced controllability of the airplane, accomplish the following:

#### Modification

(a) Within 6 months after the effective date of this AD, accomplish Bombardier Modification 8/0198 (including changing the power supply for the thunderstorm lights from the left secondary bus to the left

essential bus) in accordance with Bombardier Service Bulletin S.B. 8-24-69, Revision 'A', dated June 11, 1999.

#### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

#### Special Flight Permits

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

#### Incorporation by Reference

(d) The modification shall be done in accordance with Bombardier Service Bulletin S.B. 8-24-69, Revision "A", dated June 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF-99-21, dated July 22, 1999.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

#### Donald L. Riggins,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 00-8989 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-82-AD; Amendment 39-11612; AD 2000-05-03]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A300-600 and A310 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus A300-600 and A310 series airplanes, that requires repetitive high frequency eddy current (HFEC) inspections to detect cracking of the inner flange of fuselage frame FR73A, between beams 5 and 7, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the inner flange of fuselage frame FR73A, which could result in reduced structural integrity of the fuselage.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus A300-600 and A31 series airplanes was published in the **Federal Register** on January 5, 2000 (65 FR 397). That action

proposed to require repetitive high frequency eddy current (HFEC) inspections to detect cracking of the inner flange of fuselage frame FR73A, between beams 5 and 7, and corrective actions, if necessary.

#### Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

#### Request To Revise Applicability

The commenter, the manufacturer, requests that the applicability of the proposed AD be revised. The commenter states that the applicability should reflect the fact that inspections required by the proposed AD are necessary only on airplanes on which Airbus Modification 06925 has been installed during production. Because the retrofit solution has better stress margins compared to those of the production solution, airplanes with the retrofit solution are not subject to the unsafe condition. The commenter also states that Model A300F4-600 (freighter) series airplanes should not be included in the applicability of the AD because no aft passenger/crew doors and no frames FR73A (which are the subject areas of the inspections) exist on these airplanes. The commenter suggests that such an exclusion in the AD can best be addressed by excluding airplanes on which Airbus Modification 08907 has been accomplished, since Modification 08907 removes the reinforcements installed by Modification 06925.

The FAA concurs with the request to limit the applicability of the AD by including only those airplanes on which Airbus Modification 06925 has been installed in production, and by excluding airplanes on which Airbus Modification 08907 has been accomplished. The FAA has determined that the revised applicability will more accurately reflect those airplanes subject to the unsafe condition that is identified and addressed by the AD. The applicability of the final rule has been revised accordingly.

#### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

#### Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to fully address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

#### Cost Impact

The FAA estimates that 198 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$11,880, or \$60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2000-05-03 Airbus Industrie:** Amendment 39-11612. Docket 99-NM-82-AD.

*Applicability:* Model A300-600 and A310 series airplanes, certificated in any category, on which Airbus Modification 06925 has been accomplished in production; except airplanes on which Airbus Modification 08907 has been accomplished.

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

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

To detect and correct fatigue cracking of the inner flange of fuselage frame FR73A, which could result in reduced structural integrity of the fuselage, accomplish the following:

#### HFEC Inspection

(a) Prior to the accumulation of 18,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current (HFEC) inspection to detect cracking of the inner flange (left and right sides) of the rear fuselage frame FR73A, between beams 5 and 7, in accordance with Airbus Service Bulletin A310-53-2107, Revision 01 (for Model A310 series airplanes), or A300-53-6116, Revision 01 (for Model A300-600 series airplanes); both dated July 2, 1999; as applicable.

(1) If no crack is detected, repeat the HFEC inspection thereafter at intervals not to exceed 5,000 flight cycles.

(2) For any crack that is less than or equal to 0.20 inch (5.0 millimeters) in length: Prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Rework the frame in accordance with the applicable service bulletin. Within 3,000 flight cycles after accomplishing the rework, replace the fuselage frame FR73A between

beams 5 and 7 with a new frame section in accordance with the applicable service bulletin. Or

(ii) Replace the fuselage frame FR73A between beams 5 and 7 with a new frame section, in accordance with the applicable service bulletin.

(3) For any crack greater than 0.20 inch (5.0 millimeters) in length: Prior to further flight, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD.

(i) Repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). Or

(ii) Replace the fuselage frame FR73A between beams 5 and 7 with a new section, in accordance with the applicable service bulletin.

(b) Within 18,000 flight cycles after any replacement accomplished in accordance with paragraph (a)(2)(i), (a)(2)(ii), or (a)(3)(ii) of this AD: Repeat the inspection specified by paragraph (a) of this AD. Thereafter, repeat the inspection at intervals not to exceed 5,000 flight cycles.

(c) Submit a report of inspection findings (both positive and negative) of any inspection required by this AD to Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, the age of the airplane since entry into service, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

#### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

#### Special Flight Permits

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

#### Incorporation by Reference

(f) Except as provided by paragraph (a)(3)(i) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A310-53-2107, Revision 01, dated July 2, 1999, or Airbus Service Bulletin A300-53-6116, Revision 01, dated July 2, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 1999-013-276(B), dated January 13, 1999.

(g) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

**Donald L. Riggan,**

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

[FR Doc. 00-8988 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-NM-78-AD; Amendment 39-11676; AD 2000-07-22]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A300-600 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300-600 series airplanes, that requires repetitive inspections to detect cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are

intended to detect and correct fatigue cracking in the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box. Such cracking and discrepancies could result in reduced structural integrity of the airplane.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300-600 series airplanes was published in the **Federal Register** on May 19, 1998 (63 FR 27516). That action proposed to require repetitive inspections to detect cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, and corrective actions, if necessary.

#### Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### No Objection to the Proposal

One commenter, an operator, states that it does not own or operate the equipment affected by the proposed AD, and as such, has no comments to offer.

#### Requests To Allow Continued Flight of an Airplane With Known Cracks

Three commenters, the manufacturer and two operators, request that the FAA revise the proposed AD to allow continued flight with a crack under 30 millimeters in length, provided that

repetitive inspections are accomplished. These commenters state that analysis has shown that the structure can sustain ultimate load with the pickup angle completely cracked. Two of the commenters point out that the doubler angle is not a principal structural element (PSE). These commenters suggest that the FAA follow the continued flight criteria and angle replacement procedures described in Airbus Service Bulletin A300-53-6110, dated April 8, 1997 (which was referenced in the proposed AD as the appropriate source of service information for accomplishment of the inspection, repair, and installation of new fasteners). One of these commenters, an operator, states that such an allowance would enable scheduling of repairs in a manner that will minimize operational impact; without such an allowance, immediate field repairs would cost \$15 million in out-of-service and maintenance costs.

The FAA concurs with the commenters' request to allow, under certain conditions, continued flight of airplanes with known cracks. Based on the substantiating data supplied by the commenters, and based on the circumstances of unusual need described above, the FAA has reconsidered its position regarding continued flight with known cracks for the affected airplanes. The FAA finds that allowing the affected airplanes to continue to fly with cracks that are within the limits specified in Airbus Service Bulletin A300-53-6110 is acceptable, provided that applicable corrective actions (*e.g.*, crack stopping of hole, rotating probe inspection, repetitive detailed visual inspections, eventual modification of doubler angle) are accomplished as specified in Figure 1, Sheet 1, of that service bulletin. The FAA has revised paragraph (c) of the final rule to reflect this finding.

#### **Request for an Alternative Method of Compliance**

One commenter suggests that, as an alternative to the modification required by paragraph (c) of the proposed AD, operators be allowed to replace the existing part with a pre-modification 11045 doubler angle part with the same part number. The commenter states that, unlike the modification, such a replacement would be more expedient because it would not require jacking of the airplane. The commenter also states that, if the subject replacement is accomplished, the inspection program specified in Airbus Service Bulletin A300-53-6110 would still be required.

The FAA does not concur. The FAA acknowledges that the doubler angle

could be replaced by a pre-modified 11045 part if combined with the inspection program specified in Airbus Service Bulletin A300-53-6110. However, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has not definitively approved such a replacement scheme. Paragraph (f) of the final rule contains a provision for requesting approval of an alternative method of compliance on a case-by-case basis. No change to the final rule is necessary in this regard.

#### **Changes Made to the Proposed AD**

Since issuance of the proposed AD, Airbus Service Bulletin A300-53-6110, Revision 01, dated December 10, 1998, has been issued. This revision of the service bulletin is essentially equivalent to the original issue, dated April 8, 1997. The FAA has revised paragraphs (a), (b), and (c) of the AD to require accomplishment of the actions in those paragraphs in accordance with Revision 01 of the service bulletin. However, for operators that may have accomplished required actions prior to the effective date of this AD in accordance with the original issue of the service bulletin, "NOTE 2" has been added to the final rule to give credit for such accomplishment.

Operators should note that a fatigue rating has been added to Airbus Service Bulletin A300-53-6110, Revision 01, that is intended to allow operators to calculate an adjustable compliance threshold for accomplishment of the inspections described in the service bulletin. However, the FAA has determined that utilization of such "adjustment for range" calculations may present difficulties in determining if the applicable actions have been accomplished within the appropriate compliance time. While such adjustable compliance times are utilized as part of the Maintenance Review Board program, they do not fit practically into the AD tracking process for operators or for Principal Maintenance Inspectors attempting to ascertain compliance with AD's. Based on reviews of the "adjustment for range" calculations with the FAA Aircraft Evaluation Group, and in further consultation with the manufacturer, the FAA has determined that fixed compliance times should continue to be specified for accomplishment of the actions required by this AD. However, operators may request an extension of the compliance times of this AD in accordance with the "adjustment for range" formula, under the provisions of paragraph (f) of the final rule.

Because paragraph (c) of the final rule (which provides relief for corrective actions required in the event that cracking within certain limits is found) references paragraph (e), the FAA has revised paragraph (e) to address any case where a discrepancy is found during any inspection required by this AD and the service bulletin specifies to contact Airbus for appropriate action. In such a case, paragraph (e) requires that operators accomplish repairs prior to further flight in accordance with an FAA-approved method. The FAA also has determined that, in light of the type of actions that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, repair methods approved by either the FAA or the DGAC (or its delegated agent) would be acceptable for compliance with this AD. Accordingly, this provision is added to paragraph (e) of the final rule.

Additionally, the FAA has added "NOTE 3" to the final rule to clarify the definition of a detailed visual inspection.

#### **Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

#### **Cost Impact**

The FAA estimates that 54 Model A300-600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspections, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$6,480, or \$120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### **Regulatory Impact**

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**2000-07-22 Airbus Industrie:** Amendment 39-11676. Docket 98-NM-78-AD.

**Applicability:** Model A300-600 series airplanes, on which Airbus Modification 11044 or Airbus Modification 11045 (reference Airbus Service Bulletin A300-53-6063, dated December 12, 1996) has not been accomplished, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this

AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To detect and correct fatigue cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, which could result in reduced structural integrity of the airplane, accomplish the following:

#### Inspections

(a) Perform a detailed visual inspection to detect cracking of the doubler angle, and a detailed external visual inspection to detect discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, on the left and right sides of the airplane, in accordance with Airbus Service Bulletin A300-53-6110, Revision 01, dated December 10, 1998, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter, repeat the inspections of the doubler angle and fasteners at intervals not to exceed 2,400 flight cycles.

(1) For airplanes on which a detailed visual inspection has been performed within the last 2,400 flight cycles prior to the effective date of this AD, in accordance with Structural Significant Item (SSI) 57-10-19 of the Airbus A300-600 Maintenance Review Board (MRB) Document: Inspect within 2,400 flight cycles after the most recent SSI inspection.

(2) For airplanes on which a detailed visual inspection has not been performed within the last 2,400 flight cycles prior to the effective date of this AD, in accordance with Structural Significant Item (SSI) 57-10-19 of the Airbus A300-600 Maintenance Review Board (MRB) Document: Inspect at the time specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii), as applicable.

(i) For airplanes that have accumulated 6,600 or more total flight cycles as of the effective date of this AD: Inspect within 750 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated more than 3,100 total flight cycles, but less than 6,600 total flight cycles as of the effective date of this AD: Inspect within 1,500 flight cycles after the effective date of this AD.

(iii) For airplanes that have accumulated 3,100 total flight cycles or less as of the effective date of this AD: Inspect prior to the accumulation of 4,600 total flight cycles.

**Note 2:** Accomplishment of inspections or corrective actions prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300-53-6110, dated April 8, 1997, is acceptable for initial compliance with the applicable paragraph of this AD.

**Note 3:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by

the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

#### Corrective Actions

(b) If any discrepancy is found in a fastener that connects the doubler angle and the bottom panel of the center wing box during any detailed external visual inspection performed in accordance with paragraph (a) of this AD: Prior to further flight, remove the discrepant fastener, and perform a rotating probe inspection to detect discrepancies of the fastener holes, in accordance with Airbus Service Bulletin A300-53-6110, Revision 01, dated December 10, 1998.

(1) If no discrepancy is found in any fastener hole, prior to further flight, install a new fastener, in accordance with the service bulletin. Thereafter, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,400 flight cycles.

(2) If any discrepancy is found in any fastener hole, prior to further flight, except as provided by paragraph (e) of this AD, repair in accordance with the service bulletin, and accomplish the actions required by paragraph (c) of this AD.

(c) If any crack is found in the doubler angle during any detailed visual inspection performed in accordance with paragraph (a) of this AD, accomplish paragraph (c)(1) or (c)(2), as applicable, at the time specified in that paragraph.

(1) If the cracking is within the limits specified in Figure 1, Sheet 1, of Airbus Service Bulletin A300-53-6110, Revision 01, dated December 10, 1998: Except as required by paragraph (e) of the AD, accomplish the applicable corrective actions (e.g., crack stopping of hole, rotating probe inspection, repetitive detailed visual inspections, eventual modification of doubler angle) specified in Figure 1, Sheet 1; at the times and in accordance with the procedures specified in the service bulletin.

(2) If the cracking is outside the limits specified in Figure 1, Sheet 1 [i.e., 1.181 inches (30 millimeters) or more in length]: Prior to further flight, modify the doubler angle in accordance with Airbus Service Bulletin A300-53-6063, dated December 12, 1996. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

#### Optional Terminating Modification

(d) Accomplishment of the modification in accordance with Airbus Service Bulletin A300-53-6063, dated December 12, 1996, constitutes terminating action for the repetitive inspection requirements of this AD.

#### Approved Repairs

(e) If any discrepancy is found during any inspection required by this AD, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated

agent). For a repair method to be approved by the Manager, International Branch, ANM-116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

#### Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

#### Special Flight Permits

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

#### Incorporation by Reference

(h) Except as required by paragraph (e) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300-53-6110, Revision 01, dated December 10, 1998, or Airbus Service Bulletin A300-53-6063, dated December 12, 1996; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 5:** The subject of this AD is addressed in French airworthiness directive 97-383-240(B), dated December 17, 1997.

(i) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

**Donald L. Riggan,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 00-8987 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-SW-47-AD; Amendment 39-11688; AD 2000-08-02]

RIN 2120-AA64

#### Airworthiness Directives; Agusta Model A109A, A109AII, and A109C Helicopters

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to Agusta Model A109A, A109AII, and A109C helicopters. This action requires inspecting the main transmission to determine if certain Gleason crowns are installed and replacing any unairworthy Gleason crown with an airworthy Gleason crown. This amendment is prompted by the discovery of a cracked Gleason crown during an unscheduled transmission inspection prompted by abnormal noises coming from the transmission during main rotor deceleration. The actions specified in this AD are intended to prevent failure of the main transmission, loss of rotor drive, and subsequent loss of control of the helicopter.

**DATES:** Effective May 1, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-47-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5296, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** The Registro Aeronautico Italiano (RAI), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109A, A109AII, and A109C helicopters. The RAI reported that abnormal noises coming from the transmission during main rotor deceleration led to a transmission inspection and the discovery of a cracked Gleason crown.

Agusta has issued Bollettino Technico No. 109-109, dated June 3, 1999 (BT), which specifies inspection of the Gleason crown, part number (P/N) 109-0403-07, of the main transmission assembly, P/N 109-0400-02-5 or 109-0400-03-105. The RAI classified this BT as mandatory and issued AD 99-267, dated June 10, 1999, to ensure the continued airworthiness of these helicopters in Italy. Although the RAI permits operators to monitor the main transmissions for abnormal noises and conduct periodic airworthiness inspections until 900 hours or more time-in-service have been accrued, the FAA does not concur that "noises" are a reliable indicator of impending failure.

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

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of these same type designs registered in the United States, this AD is being issued to prevent failure of the main transmission, loss of rotor drive, and subsequent loss of control of the helicopter. This AD requires inspecting the main transmission to determine if certain Gleason crowns are installed and replacing them with airworthy Gleason crowns before further flight. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, inspecting the main transmission to determine if certain Gleason crowns are installed and replacing these certain Gleason crowns with an airworthy Gleason crown is required before further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 8 helicopters will be affected by this AD, that it will take approximately 14 work hours to

inspect and replace the Gleason crown, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$7500 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$66,720.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-SW-47-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has also determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not

a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**AD 2000-08-02 Agusta:** Amendment 39-11688. Docket No. 99-SW-47-AD.

**Applicability:** Model A109A, A109AI, and A109C helicopters, Serial Number (S/N) 7630, 7633, 7654, 7667, 7671, 7672, 7676, or 7677 with main transmission, part number (P/N) 109-0400-02-5 or 109-0400-03-105, with Gleason crown, P/N 109-0403-07, installed, certified in any category.

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

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

To prevent failure of the main transmission, loss of rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine if a transmission with a S/N specified in Table 1 is installed.

TABLE 1

Transmission P/N	Transmission S/N	Gleason Crown S/N
109-0400-02-5 .....	171	A0488
109-0400-02-5 .....	326	A0490
109-0400-03-105 .....	026	A0571
109-0400-03-105 .....	028	A0572
109-0400-03-105 .....	025	A0578
109-0400-03-105 .....	029	A0584
109-0400-03-105 .....	036	A0614
109-0400-03-105 .....	037	A0618
109-0400-03-105 .....	041	A0630
109-0400-03-105 .....	A2-1274	A2-0645
109-0400-03-105 .....	A2-1356	B15919

(b) If the installed Gleason crown, P/N 109-0403-07, S/N is listed in Table 1, before further flight, replace it with an airworthy Gleason crown, P/N 109-0403-07-103, S/N B58264 or subsequent, except S/N B58271.

(1) After installing the replacement Gleason crown, mark the nomenclature "S.M. 109254" on the "Modification Incorporated" area of the additional nameplate, P/N MS27253-2. Update the main transmission "Assembly Historical Record" or equivalent record, with the P/N and S/N of the Gleason crown installed.

(2) If not previously bonded to the transmission, bond the additional nameplate, P/N MS27253-2, with adhesive EA934NA below the main transmission nameplate.

**Note 2:** Agusta Bollettino Technico 109-109, dated June 3, 1999, pertains to the subject of this AD.

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

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

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

(e) This amendment becomes effective on May 1, 2000.

**Note 4:** The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 99-267, dated June 10, 1999.

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

**Henry A. Armstrong,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00-9359 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF STATE****22 CFR Part 62****[Public Notice 3284]****Fees for Exchange Visitor Program Designation Services****AGENCY:** Bureau of Educational and Cultural Affairs, State.**ACTION:** Final rule.

**SUMMARY:** By interim final rule published September 27, 1999 (64 FR 51894), the United States Department of State ["Department"] adopted fees sufficient for it to recover the full cost of its administrative processing of certain requests for Exchange Visitor Program Designation services. The Department is hereby adopting as final the September 27, 1999 interim final rule, with modifications. The Department administers the Exchange Visitor Program pursuant to the Fulbright-Hays Act of 1961. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agency Appropriations Act of 1998 authorizes the Department to collect fees related to its provision of Exchange Visitor Program services.

**DATES: Effective Date:** The interim rule published on September 27, 1999 (64 FR 51894) is adopted as final and is effective on April 14, 2000. The addition in this rule of § 62.90 is effective on April 14, 2000. The specified fee will be assessed for all requests for an extension, change of category, reinstatement, or program designation as well as for non-routine requests for the Form IAP-66 post-marked after April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sally J. Lawrence (Chief), Exchange Visitor Program Designation Staff. (202)401-9810.

**SUPPLEMENTARY INFORMATION:** On September 27, 1999, the United States Information Agency ["USIA"] issued an interim final rule on the adoption of fees for all requests for an extension, change of category, reinstatement, or program designation as well as for non-routine requests for the Form IAP-66. This rule was to be effective on January 1, 2000. The September 27 interim final rule on fees was amended by a final rule dated October 7, 1999 (64 FR 54538), and also by an interim final rule dated January 5, 2000 (65 FR 352). Those amendments were needed because of the consolidation of USIA into the Department of State and the time needed to establish an administrative process for the Department's collection of the fees. The Department now has

had sufficient time to institute the requisite collection, recording and accounting system.

Accordingly, the Department hereby adopts as a final rule the September 27, 1999 interim final rule at 64 FR 51894, with administrative modifications as indicated above. This rule has no effect on the user fee that is currently being charged for applications for waiver of the two-year home-country residence requirement of 212(e) of the Immigration and Nationality Act, as set forth in 22 CFR 22.1 item 72.

**Regulatory Flexibility Act**

Because this rule involves a foreign affairs function of the United States Government, the Department is not required to prepare and make available for public comment an initial regulatory flexibility analysis.

**Executive Order 13132**

This rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Executive Order 12866**

This rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

**Small Business Regulatory Enforcement Fairness Act**

The Department has determined that this rule is not a major rule, as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996.

**Unfunded Mandates Reform Act of 1995**

No actions are necessary under the provisions of the unfunded Mandates Reform Act of 1995.

**Paperwork Reduction Act**

This rule does not create any new paperwork requirements.

**List of Subjects in 22 CFR Part 62**

Cultural Exchange Programs.

In consideration of the foregoing, the Department of State amends Chapter I, Subchapter G of Title 22, Code of Federal Regulations, as follows:

**PART 62—EXCHANGE VISITOR PROGRAM**

1. The authority citation for 22 CFR Part 62 is revised to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431-1442, 2451-2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

**Subpart H—Fees**

2. Section 62.90 is added to 22 CFR Part 62 to read as follows:

**§ 62.90 Fees.**

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 shall be submitted as directed by the Department and shall be in the amount prescribed by law or regulation. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency and shall be made payable to the "Department of State." A charge of \$25.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. If an applicant is residing outside the United States at the time of application, remittance may be made by a bank international money order or a foreign draft drawn on an institution in the United States, and payable to the Department of State in United States currency.

(b) *Amounts of fees.* The following fees are prescribed:

- (1) Request for program extension—\$198.
- (2) Request for change of program category—\$198.
- (3) Request for reinstatement—\$198.
- (4) Request for program designation—\$799.
- (5) Request for non-routine handling of an IAP-66 Form Request—\$43.

Dated: April 7, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00-9232 Filed 4-13-00; 8:45 am]

**BILLING CODE 4710-08-U**

**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Parts 4022 and 4044****Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits

Payable in Terminated Single-employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in May 2000. Interest assumptions are also published on the PBGC's web site (<http://www.pbgc.gov>).

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

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

On March 17, 2000, the PBGC published in the **Federal Register** (at 65 FR 14752 and 14753) two final rules changing how the interest rates are to be used and where they are to be set forth in the PBGC's regulations. These two final rules are effective May 1, 2000, which is also the effective date of this amendment to the interest rate tables.

As of May 1, 2000, three sets of interest rate assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical

methodology (found in Appendix C to Part 4022). (For a more detailed explanation of the lump-sum interest rates for private-sector payments, see 65 FR 14753.)

Accordingly, this amendment (1) Adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during May 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during May 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during May 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.00 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for April 2000) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for April 2000.

For private-sector payments, the interest rate assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new

interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

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

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

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

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044, as amended by the final rules effective May 1, 2000, published March 17, 2000 (at 65 FR 14752 and 14753), are further amended as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 79, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
79	5-1-00	6-1-00	5.25	4.50	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 79, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**  
\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
79 .....	5-1-00	6-1-00	5.25	4.50	4.00	4.00	7	8

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

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

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

5. In appendix B to part 4044, a new entry, as set forth below, is added to the

table. (The introductory text of the table is omitted.)

**Appendix B to Part 4044—Interest Rates Used To Value Benefits**  
\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:			
	$i_t$	for $t =$	$i_t$	for $t =$
May 2000 .....	.0700	1-25	.0625	>25

Issued in Washington, DC, on this 10th day of April 2000.

**John Seal,**  
*Acting Executive Director, Pension Benefit Guaranty Corporation.*  
[FR Doc. 00-9292 Filed 4-13-00; 8:45 am]  
**BILLING CODE 7708-01-P**

**ADDRESSES:** Documents as indicated in this preamble are available for inspection and copying at Coast Guard Marine Safety Office, San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

was designated a special anchorage area in 1969, and the regulations were amended in 1980. The special anchorage designation is marked on the chart of the area and referenced in the Coast Pilot for the convenience of mariners. Local authorities also exercise jurisdiction over this water area and have enacted ordinances further regulating vessel activity. These local authorities have encountered confusion on the part of mariners about the applicable requirements and the concurrent exercise of authority by both federal and local entities. The Richardson Bay Regional Agency asked the Coast Guard to update the explanatory note accompanying the Federal anchorage regulations regarding the existence of local authority and ordinances. The Coast Guard believes that providing accurate and current information regarding applicable authority and requirements would be in the best interest of safe and efficient navigation. This amendment to the regulation does not alter the special anchorage area designation or change the dimensions of the anchorage area.

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR PART 110**

**[CGD11-99-009]**

**RIN 2115-AA98**

**Anchorage Regulation; San Francisco Bay, CA**

**AGENCY:** Coast Guard, DOT.  
**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending the regulations for the special anchorage area in Richardson Bay, adjacent to San Francisco Bay, California by modifying the explanatory note accompanying the designation of the special anchorage. This explanatory information is provided at the request of local authorities and is intended to facilitate safe navigation by calling mariners' attention to local regulations governing the anchorage area.

**EFFECTIVE DATE:** This final rule is effective on May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Andrew Cheney, Marine Safety Office San Francisco Bay, telephone (510) 437-2770.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On January 11, 2000 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) for this regulation in the **Federal Register** (65 FR 1581). The comment period ended on March 13, 2000. The Coast Guard received one comment on the proposal, which is addressed below. A public hearing was not requested and no hearing was held.

The Coast Guard is revising the "Note" accompanying the special anchorage regulations, 33 CFR 110.126a, for San Francisco Bay. This rule will amend the explanatory information provided regarding local authority and requirements.

A special anchorage is an area where vessels less than 20 meters in length are not required to make sound signals while anchored or display anchor lights as would otherwise be required under the Navigation Rules. Richardson Bay

**Discussion of Comments**

One comment was received in favor of the amendment to the anchorage regulations. The commenter felt that the change to the explanatory note would help clarify jurisdiction over the waters of Richardson Bay, and that it would provide direction to the public regarding appropriate use of the

anchorage area. The Coast Guard has not made any changes to the proposed rule. The sole commenter did not request a public hearing, and none was scheduled or held.

#### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Due to the mainly administrative nature of this change, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation is unnecessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

#### Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rule making process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew Cheney at the address contained in the paragraph entitled **FOR FURTHER INFORMATION CONTACT**.

#### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

#### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rulemaking does not have sufficient federalism implications under that order.

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2-1, paragraph (34)(f), it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

#### Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under E.O. 13045, Protection of children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

#### Regulation

In consideration of the foregoing, the Coast Guard amends Subpart A of Part 110, Title 33, Code of Federal Regulations as follows:

#### PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46; and 33 CFR 1.05-1(g).

#### § 110.126 [Amended]

2. The "Note" following Section 110.126a, is revised to read as follows:

\* \* \* \* \*

**Note:** Mariners anchoring in the special anchorage area should consult applicable ordinances of the Richardson Bay Regional Agency and the County of Marin. These ordinances establish requirements on matters including the anchoring of vessels, placement of moorings, and use of anchored and moored vessels within the special anchorage area. Information on these local agency requirements may be obtained from the Richardson Bay Harbor Administrator.

Dated: March 20, 2000.

#### C.D. Wurster,

*Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.*  
[FR Doc. 00-9219 Filed 4-13-00; 8:45 am]

BILLING CODE 4910-15-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[DE040-1023a; FRL-6577-7]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the "plan") submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on September 17, 1998. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The Delaware plan establishes emission limitations and other requirements for existing HMIWIs, and provides for the implementation and enforcement of those limitations and requirements.

**DATES:** This final rule is effective June 13, 2000 unless by May 15, 2000 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania; and the Department of Natural Resources and Environmental Control's offices at 715 Grantham Lane, New Castle; and 89 Kings Highway, Dover, Delaware.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:** This document is divided into Sections I through V and answers the questions posed below.

#### I. General Provisions

What is EPA approving?  
 What is a State 111(d)/129 plan?  
 What pollutant(s) will this action control?  
 What are the expected environmental and public health benefits from controlling HMIWI emissions?

#### II. Federal Requirements the Delaware 111(d)/129 Plan Must Meet for Approval

What general requirements must the DNREC meet to receive approval of the Delaware HMIWI 111(d)/129 plan?

What does the Delaware State plan contain?

Does the Delaware 11(d)/129 plan meet all EPA requirements for approval?

#### III. Requirements Affected HMIWI Owners/Operators Must Meet

How do I determine if my HMIWI is a designated facility subject to the Delaware 111(d)/129 plan?

What general requirements must I meet under the approved EPA 111(d)/129 plan?

What emissions limits must I meet, and in what time frame?

Are there any operational requirements for my HMIWI and emissions control system?

What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

Is there a requirement for obtaining a Title V permit?

#### IV. Final EPA Action

##### V. Administrative Requirements

###### I. General Provisions

**Q.** What is EPA approving?

**A.** EPA is approving the Delaware 111(d)/129 plan for the control of air pollutant emissions from HMIWIs. On September 17, 1998, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted the plan to EPA for approval. EPA is publishing this action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

**Q.** What is a State 111(d)/129 plan?

**A.** Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT based EG document and then requires states to develop 111(d)/129 plans that implement the EG requirements. The EG for HMIWI at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of sections 111(d) and 129. These requirements must be incorporated into a state 111(d)/129 plan that is "at least as protective" as the EG, and that becomes Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, "Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for section 111(d)/129 State Plans" (EPA-456/R-97-007, November, 1997).

**Q.** What pollutant(s) will this action control?

**A.** The promulgated September 15, 1997 EPA EG, subpart Ce, are applicable to existing HMIWIs (i.e., the designated facilities) that emit organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury, particulate matter), opacity, and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). This action establishes emission limitations for each of these pollutants.

**Q.** What are the expected environmental and public health

benefits from controlling HMIWI emissions?

**A.** HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone level, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium, and lead included probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings.

#### II. Federal Requirements the Delaware 111(d)/129 Plan Must Meet for Approval

**Q.** What general requirements must the DNREC meet to receive approval of the Delaware 111(d)/129 plan?

**A.** The plan must meet the requirements of both 40 CFR part 60, subparts B, and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for designated pollutants and facilities. The EG, subpart Ce, and the related new source performance (NSPS), subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with sections 111(d) and 129 of the CAA. In general, the applicable provisions of Subpart Ec relate to compliance, emissions testing and monitoring; and recordkeeping and reporting. More specifically, the Delaware plan must meet the requirements of (1) 40 CFR part 60, subpart Ce, sections 60.30e through 60.39c, and the related subpart Ec provisions; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

**Q.** What does the Delaware State plan contain?

**A.** Consistent with the requirements of subparts B, Ce and Ec, the Delaware Plan contains the following elements:

1. A demonstration of the State's legal authority to implement the section 111(d)/129 State HMIWI Plan;
2. Identification of the State's enforceable mechanism, Regulation No. 20, section 29;
3. Source and emission inventories, as required;
4. Emission limitation requirements that are at least as protective as those in subpart Ce;
5. A source compliance schedule;
6. Source testing, monitoring, recordkeeping, and reporting requirements;
7. HMIWI operator training and qualification requirements;

8. Requirements for development of a Waste Management Plan;
9. Records of the public hearing on the State plan;
10. Provision for State submittal to EPA of annual reports on progress in plan enforcement; and
11. A Title V permit application due date.

On August 15, 1998, the DNREC adopted an HMIWI regulation (Regulation 20, section 29) that became effective on September 11, 1998. The regulation applies to existing HMIWIs and incorporates by reference (IBR), with certain exceptions, the related and applicable subpart Ec, requirements.

Q. Does the Delaware 111(d)/129 plan meet all EPA requirements for approval?

A. Yes. The DNREC has submitted a 111(d)/129 plan that conforms to all EPA subpart B and Ce requirements cited above. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

### III. Requirements Affected HMIWI Owners/Operators Must Meet

Q. How do I determine if my HMIWI is a designated facility subject to the Delaware 111(d)/129 plan?

A. If construction commenced on your HMIWI on or before June 20, 1996, and no modification commenced after March 16, 1998, your HMIWI may be the subject plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to EPA's municipal waste combustor rule; pyrolysis units; and cement kilns. Details regarding applicability and exemptions provisions are stipulated in Regulation 20, section 29, and section 60.50c.

Q. What general requirements must I meet under the approved EPA 111(d)/129 plan?

A. In general, the Delaware HMIWI regulation establishes the following requirements:

1. Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), lead (Pb), cadmium (Cd), and mercury (Hg).

2. Compliance and performance testing.

3. Operating parameter monitoring.
4. Operator training and qualification.
5. Development of a waste management plan.

6. Source testing, recordkeeping and reporting.

7. A Title V permit.

A full and comprehensive statement of the above requirements is in Delaware Regulation 20, section 29.

Q. What emissions limits must I meet, and in what time frame?

A. You must install an emissions controls system capable of meeting the maximum achievable control technology (MACT) emission limitations for the pollutants identified above. The pollutant emission limitations are stipulated in Regulation 20, section 29, and section 60.52c(a), Table 2. Also, the DNREC regulation at section 60.52c(b) establishes a 10 percent opacity limit. Compliance is required on or before September 11, 1999 for all designated facilities. With adequate justification, you may petition the DNREC for a compliance schedule extension. Petitions must include documentation of your analyses undertaken to support the need for an extension, and your evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis. Also, your extension request must include increments of progress that are no less stringent than those specified in the plan. In any case, your HMIWI must meet the emission limitation(s) as expeditiously as practicable, but no later than September 11, 2001.

Q. Are there any operational requirements for my HMIWI and emissions control system?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established operating parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by the HMIWI operators.

Failure to operate the HMIWI or APCD within the established operating parameter limits constitutes an emissions violation for the controlled air pollutant. However, as an HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that your facility is meeting the required emission limitations, providing a repeat

performance test is conducted in a timely manner. A fully trained and qualified operator must be available at your facility during the operation of the HMIWI, or the operator must be readily available to the facility within one hour. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the criteria stipulated in the plan's regulation. Also, as a HMIWI owner/operator, you are required to develop and update annually site-specific information regarding your facilities' operations. Each of your HMIWI operators is required on an annual basis to review the updated operational information. Details regarding operational requirements are stipulated in Regulation 20, section 29, and sections 60.56c(d) through (j) and 60.53c.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below:

You are required to conduct an initial performance test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. As noted above, operating parameter limits are monitored and established during the initial performance test. Monitored HMIWI operating parameters include, for example, waste charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (e.g., carbon) flow rate, hydrogen chloride sorbent (e.g., lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH. After the initial performance test, compliance testing is then required annually to determine compliance with the emission limitations for PM, CO, and HCl. If all three performance tests over a 3-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), you may forgo a performance test for that pollutant for the subsequent 2 years.

Recordkeeping and reporting are required to document the results of the initial and annual performance tests, continuous monitoring of site-specific operating parameters, compliance with the operator training and qualification requirements, and development of the waste management plan. Records must be maintained for at least five years. Details regarding all testing, monitoring, recordkeeping, and reporting requirements are stipulated in

Regulation 20, section 29, and sections 60.56c, 60.57c, and 60.58c.

Q. Is there a requirement for obtaining a Title V permit?

A. Yes, affected facilities are required to operate under a Title V permit no later than September 15, 2000. This is required under Regulation 20, section 29, and section 60.50c(l).

#### IV. Final EPA Action

EPA is approving Delaware's 111(d)/129 plan for controlling HMIWI emissions. This 111(d)/129 plan approval does not include, those provisions, such as siting and fugitive emission requirements, that relate solely to facilities subject to the NSPS, subpart Ec. EPA action on the requested NSPS, subpart Ec, delegation to the DNREC will be taken under a separate action from this 111(d)/129 plan approval.

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Delaware 111(d)/129 plan for the control of HMIWI emissions from affected facilities. As provided by 40 CFR 60.28(c), any revisions to the Delaware section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the DNREC in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d)/129 plan should relevant adverse or critical comments be filed. This rule will be effective June 13, 2000 without further notice unless the Agency receives relevant adverse comments by May 15, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 13, 2000 and no further action will be taken on the proposed rule.

#### V. Administrative Requirements

##### A. General 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 approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. 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 approves 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 (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 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's 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), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan 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 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.*).

##### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### C. 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 13, 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 62

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

Dated: April 3, 2000.

**Bradley M. Campbell,**  
*Regional Administrator, Region III.*

40 CFR Part 62, is amended as follows:

**PART 62—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart I—Delaware**

2. A new center heading, and §§ 62.1975, 62.1976, and 62.1977 are added to subpart I to read as follows:

**Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—Section 111(d)/129 Plan**

**§ 62.1975 Identification of plan.**

Section 111(d)/129 plan for HMIWI and the associated Delaware Department of Natural Resources, Division of Air and Waste Management, Regulation No. 20, section 29, as submitted on September 17, 1998.

**§ 62.1976 Identification of sources.**

The plan applies to all Delaware existing HMIWI for which construction was commenced on or before June 20, 1996.

**§ 62.1977 Effective date.**

The effective date of the plan for hospital/medical/infectious waste incinerators is June 13, 2000.

[FR Doc. 00–9233 Filed 4–13–00; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 64**

[Docket No. FEMA–7730]

**List of Communities Eligible for the Sale of Flood Insurance**

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

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes

the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the third column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Dannels, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street SW., room 411, Washington, DC 20472, (202) 646–3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

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

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

1. The authority citation for part 64 continues to read as follows:

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

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program:			
Minnesota: Hill City, city of, Aitkin County .....	270002	January 21, 2000 .....	November 8, 1974.
Indiana: Westport, town of, Decatur County .....	180517	January 24, 2000.	
Iowa: Ventura, City of, Cerro Gordo County .....	190674	.....do .....	November 5, 1976.
Illinois: Carrollton, city of, Greene County .....	170250	February 3, 2000 .....	March 5, 1976.
Illinois: Montgomery, county of, unincorporated areas ..	170992	.....do .....	January 9, 1981.
Maine: Fayette, town of, Kennebec County .....	230237	.....do .....	November 29, 1974.
Indiana: Waynetown, town of, Montgomery County .....	180175	February 9, 2000 .....	April 9, 1976.

State/location	Community No.	Effective date of eligibility	Current effective map date
Texas: Tolar, city of, Hood County .....	480868	February 15, 2000 .....	July 18, 1975.
North Carolina: Conetoe, town of, Edcombe County ..	370089	.....do .....	January 9, 1974.
North Carolina: Newton Grove, town of, Sampson County,	370524	.....do	
Kansas: Protection, city of, Comanche County .....	200550	February 24, 2000 .....	July 2, 1976.
North Carolina: Pittsboro, town of, Chatham County ....	370420	.....do .....	October 20, 1978.
New Eligibles—Regular Program:			
Iowa: Cumming, city of, Warren County .....	190946	January 24, 2000 .....	November 20, 1998.
North Carolina: Angier, town of, Harnett County .....	370522	February 3, 2000 .....	April 16, 1990.
Washington: Beaux Arts Village, town of King County	530242	February 4, 2000 .....	May 16, 1995.
North Carolina: Gamewell, town of, Caldwell County ...	370451	February 15, 2000 .....	August 16, 1988.
Reinstatements:			
Pennsylvania Elverson, borough of, Chester County ....	422287	February 13,—Emer .....	November 20, 1996.
		February 25, 1983—Reg.	
		November 20, 1996—Susp.	
		January 19, 2000—Rein.	
Virginia: Boykins, town of, Southampton County .....	510151	May 20, 1982—Emer .....	April 1, 1982.
		April 1, 1982—Reg.	
		April 1, 1982—Susp.	
		January 31, 2000—Rein.	
Suspensions:			
Illinois: Hamilton, county of, unincorporated areas .....	170910	July 29, 1975—Emer .....	February 1, 1990—Reg.
		February 1, 1990—Reg.	
		January 17, 2000—Susp.	
Regular Program Conversions			
Region I:			
Massachusetts: Millbury, town of, Worcester County	250318	January 7, 2000—Suspension with-	January 7, 2000.
		drawn.	
Region III:			
Pennsylvania:			
Clarks Summit, borough of, Lackawanna County ..	420527	.....do .....	Do.
Kutztown, borough of, Berks County .....	420136	.....do .....	Do.
Maxatawny, township of, Berks County .....	421381	.....do .....	Do.
Region IV:			
Tennessee: Decatur County, unincorporated areas .....	470041	.....do .....	Do.
Region III:			
Virginia: Halifax, town of, Halifax County .....	510301	January 19, 2000—Suspension with-	January 19, 2000.
		drawn.	
Region VI:			
Oklahoma:			
Calumet, town of, Canadian County .....	400268	.....do .....	Do.
Canadian County, unincorporated areas .....	400485	.....do .....	Do.
El Reno, city of, Canadian County .....	405377	.....do .....	Do.
Mustang, city of, Canadian County .....	400409	.....do .....	Do.
Piedmont, city of, Canadian County .....	400027	.....do .....	Do.
Yukon, city of, Canadian County .....	400028	.....do .....	Do.
Texas:			
Austin, city of, Travis County .....	480624	.....do .....	Do.
San Leanna, village of, Travis County .....	481305	.....do .....	Do.
Travis County, unincorporated areas .....	481026	.....do .....	Do.
Region VII:			
Iowa:			
Adel, city of, Dallas County .....	190103	.....do .....	Do.
Dallas County, unincorporated areas .....	190860	.....do .....	Do.
DeSoto, city of, Dallas County .....	190359	.....do .....	Do.
Granger, city of, Dallas County .....	190104	.....do .....	Do.
Perry, city of, Dallas County .....	190105	.....do .....	Do.
Redfield, city of, Dallas County .....	190361	.....do .....	Do.
Missouri:			
Bull Creek, village of, Taney County .....	290916	.....do .....	Do.
Clark County, unincorporated areas .....	290792	.....do .....	Do.
Hollister, city of, Taney County .....	290437	.....do .....	Do.
Region VIII:			
North Dakota:			
Burlington, city of, Ward County .....	380141	.....do .....	Do.
Burlington, township of, Ward County .....	380650	.....do .....	Do.
Carpio, city of, Ward County .....	380142	.....do .....	Do.
Donnybrook, city of, Ward County .....	380143	.....do .....	Do.
Lebanon, township of, McHenry County .....	380309	.....do .....	Do.
McHenry County, unincorporated areas .....	380307	.....do .....	Do.
McKinney, township of, Renville County .....	380311	.....do .....	Do.
Minot, city of, Ward County .....	385367	.....do .....	Do.
Newport, township of, McHenry County .....	380308	.....do .....	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Sawyer, city of, Ward County .....	380145	.....do .....	Do.
Velva, city of, McHenry County .....	380051	.....do .....	Do.
Velva, township of, McHenry County .....	380310	.....do .....	Do.
Villard, township of, McHenry County .....	380317	.....do .....	Do.
Willow Creek, township of, McHenry County .....	380337	.....do .....	Do.
Ward County, unincorporated areas .....	385370	.....do .....	Do.
Region IX:			
California:			
Napa, city of, Napa County .....	060207	.....do .....	Do.
Region X:			
Oregon:			
Aumsville, city of, Marion County .....	410155	.....do .....	Do.
Aurora, city of, Marion County .....	410156	.....do .....	Do.
Detroit, city of, Marion County .....	140157	.....do .....	Do.
Gates, city of, Marion County .....	410159	.....do .....	Do.
Gervais, city of, Marion County .....	410160	.....do .....	Do.
Hubbard, city of, Marion County .....	410161	.....do .....	Do.
Idanha, city of, Marion County .....	410162	.....do .....	Do.
Jefferson, city of, Marion County .....	410163	.....do .....	Do.
Keizer, city of, Marion County .....	410288	.....do .....	Do.
Marion County, unincorporated areas .....	410154	.....do .....	Do.
Mt. Angel, city of, Marion County .....	410165	.....do .....	Do.
Salem, city of, Marion County .....	410167	.....do .....	Do.
Scotts Mills, city of, Marion County .....	410168	.....do .....	Do.
Silverton, city of, Marion County .....	410169	.....do .....	Do.
St. Paul, city of, Marion County .....	410166	.....do .....	Do.
Stayton, city of, Marion County .....	410170	.....do .....	Do.
Turner, city of, Marion County .....	410171	.....do .....	Do.
Woodburn, city of, Marion County .....	410172	.....do .....	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

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

Issued: March 27, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00-9343 Filed 4-13-00; 8:45 am]

BILLING CODE 6718-05-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 000328086-0086-01; I.D. 012800H]

RIN 0648-AN56

**Atlantic Highly Migratory Species; Bluefin Tuna Landings Reporting**

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

**ACTION:** Final rule; determination of state jurisdiction.

**SUMMARY:** NMFS has determined that the State of Maryland has implemented regulations for reporting Atlantic bluefin tuna (BFT) landings in the recreational fishery that are mandatory, at least as restrictive as the Federal

reporting requirements, and effectively enforced. Under Maryland law, participants in the recreational fishery who land BFT must report via the Maryland BFT landing card program. Therefore, recreational anglers who land BFT in the State of Maryland are exempt from the requirement to report BFT landings through NMFS' automated landings reporting system. All other Federal regulations applicable to Atlantic tunas continue to apply within the boundary of the State of Maryland. The intent of this action is to eliminate a Federal requirement that duplicates State regulations.

**DATES:** Effective April 13, 2000 through May 31, 2001.

**ADDRESSES:** Requests for copies of the final rule and information on Atlantic tunas landings reporting should be directed to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:**

Maria Uitterhoeve, 301-713-2347; Pat Scida, 978-281-9208.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Atlantic Tunas Convention Act (ATCA), codified at 16 U.S.C. 971 *et seq.*, provides for U.S. participation in the conduct of scientific research programs and regulation of fishing operations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). Section 971g(d)(2)(B) provides that Federal regulations promulgated to implement ICCAT recommendations shall apply within the boundary of any state bordering on any convention area if the Secretary of Commerce determines that any such state has laws or regulations that are less restrictive than the Federal regulations or, if not less restrictive, are not effectively enforced.

Regulations implemented under the authority of ATCA governing the harvest of Atlantic highly migratory species by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 635. Specifically, regulations limiting the harvest of BFT and requiring reporting of BFT landings implement ICCAT recommendations regarding country catch quotas and catch reporting. In the case of the U.S.

recreational fishery for young (pre-spawning) BFT, ICCAT has recommended that landings of fish 27 to 47 inches (69 to 119 cm) curved fork length be limited to 8 percent of the U.S. quota. BFT of this size are the target of a popular summertime recreational fishery off the mid-Atlantic and southern New England coasts, and the potential for harvest far exceeds the available quota. Consequently, NMFS must restrict catch of BFT through annual quotas and trip limits and must monitor landings in real-time.

#### **Automated Landings Reporting System**

NMFS has set up an automated landings reporting system (ALRS), and regulations at 50 CFR 635.5(c) require that anglers who land BFT call a toll-free number (1-888-872-8862) to report the number and size of fish. NMFS also conducts dockside and telephone surveys of permitted anglers to estimate fishing effort and collect more detailed scientific information on catch and landings. Recognizing that the states also have an interest in collecting information on the economically important fisheries for Atlantic highly migratory species, NMFS has cooperated with the states to minimize duplication of effort and reduce the reporting burden while ensuring that BFT landings information is collected as quickly as possible. In the event that NMFS determines a state reporting system to be equally effective as the ALRS, NMFS will notify participating anglers that compliance with the state system satisfies the reporting requirement of 50 CFR 635.5(c).

#### **Maryland BFT Landing Tag Program**

State regulations promulgated under section 4-2A-03 of the Annotated Code of Maryland regarding landing of BFT in Maryland are found at the Code of Maryland Regulations 08.02.05.23. Such regulations allow BFT to be landed in the State of Maryland only if consistent with the applicable fishing seasons, size limits, and retention limits specified in the Code of Federal Regulations at 50 CFR part 635. The regulation also requires that BFT landed in Maryland

be landed in whole form and have a landing tag affixed before removal of the fish from the vessel. If the BFT is on board a vessel on a trailer, a landing tag must be affixed before such vessel is removed from the water. A landing tag may be obtained only from officially designated reporting stations and only after the angler completes a landing reporting card for each BFT.

The catch reporting and landing tag regulations of Maryland are enforced by the Maryland Natural Resources Police. Violations of the Maryland BFT landings reporting regulations are subject to a fine. Anglers may obtain further information on the Maryland BFT landing tag program and on the locations of reporting stations from Al Wesche of the Maryland Department of Natural Resources at (410) 213-1531.

#### **Determination of State Jurisdiction**

Under Maryland regulations, recreational fishermen must report all BFT landings through the Maryland BFT landing tag program. NMFS has determined that the State of Maryland has implemented regulations for reporting BFT landings that are at least as restrictive as the Federal reporting requirements and are effectively enforced. Therefore, participants in the recreational fishery who land BFT in the State of Maryland are exempt from calling in their landings through the NMFS ALRS. This exemption applies only to ALRS reporting; all other Federal regulations for BFT (e.g., seasons, quotas, retention limits, permit requirements, survey participation) continue to apply within the boundary of the State of Maryland. Information on applicable Federal regulations may be obtained by calling (888) 872-8862 or (978) 281-9305, or through the Internet at: [www.nmfspermits.com](http://www.nmfspermits.com). Because ATCA requires NMFS to undertake a continuing review of state regulations with respect to the applicability of Federal regulations, this determination is effective only for the 2000 fishing year, which ends May 31, 2001.

#### **Classification**

This action is taken under the authority of 16 U.S.C. 971g(d)(2)(B) and

is consistent with regulations at 50 CFR 635.5(c).

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

This rule eliminates for participants in the BFT recreational fishery in Maryland a collection of information requirement subject to the Paperwork Reduction Act and approved by OMB under control number 0648-0328, namely a telephone report of a BFT landing. The burden eliminated is estimated at 5 minutes per telephone report, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Assistant Administrator for Fisheries, NOAA, has determined that under 5 U.S.C. 553(b)(B) there is good cause to waive the requirement for prior notice and opportunity for public comment because delaying the final rule to provide for such procedures would be contrary to the public interest in that it would subject fishermen landing BFT in Maryland to duplicative Federal and state regulations. This determination of state jurisdiction relieves a restriction by exempting anglers landing BFT in Maryland from the Federal requirement to report BFT landings since they are now subject to an effective State reporting requirement that fulfills the same purpose. Under 5 U.S.C. 553(d)(1), because this action relieves a restriction, it is not subject to a 30-day delay in effective date.

Because prior notice and opportunity for public comment is not required for this action by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603 it is not subject to the analytical requirements of the Regulatory Flexibility Act. Accordingly, no regulatory flexibility analysis was prepared.

Dated: April 7, 2000.

**Penelope D. Dalton,**

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

[FR Doc. 00-9352 Filed 4-13-00; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 65, No. 73

Friday, April 14, 2000

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO-14-A69, et al.; DA-00-03]

#### Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Class III and Class IV Milk Pricing Formulas

7 CFR Part	Marketing area	AO Nos.
1001 .....	Northeast .....	AO-14-A69.
1005 .....	Appalachian .....	AO-388-A11.
1006 .....	Florida .....	AO-356-A34.
1007 .....	Southeast .....	AO-366-A40.
1030 .....	Upper Midwest .....	AO-361-A34.
1032 .....	Central .....	AO-313-A43.
1033 .....	Mideast .....	AO-166-A67.
1124 .....	Pacific Northwest .....	AO-368-A27.
1126 .....	Southwest .....	AO-231-A65.
1131 .....	Arizona-Las Vegas .....	AO-271-A35.
1135 .....	Western .....	AO-380-A17.

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

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, which requires the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The legislation requiring the hearing describes the proceeding as an emergency. Any changes to the formulas resulting from the required proceeding are to be implemented on January 1, 2001.

**DATES:** The hearing will convene at 8 a.m. on May 8, 2000.

**ADDRESSES:** The hearing will be held at the Embassy Suites Hotel, 1900

Diagonal Rd., Alexandria, Virginia 22314, (703-684-5900).

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357, e-mail address [Connie.Brenner@usda.gov](mailto:Connie.Brenner@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact David Walker at (703) 549-097003; email [dwalker@fedmilk1.com](mailto:dwalker@fedmilk1.com) before the hearing begins.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria,

Virginia 22314, beginning at 8 a.m., on Monday, May 8, 2000, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to re-consideration of the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate from Congress via the Consolidated Appropriations Act, 2000 (Pub. L. 106-113, 115 Stat. 1501), requires the Secretary of Agriculture to conduct a formal

rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders and to implement any changes on January 1, 2001.

To ensure a comprehensive consideration of these pricing formulas, the Department invited all interested persons to submit proposals. As detailed below, 32 proposals (and any appropriate modifications thereof) will be heard. A number of other proposals were rejected in that they lacked authority, were beyond the purpose of the hearing, or were otherwise inappropriate. The proposals received are available for public inspection at USDA/AMS/Dairy Programs, Room 2968, South Building, 14th and Independence Ave., SW., Washington, DC 20250.

The legislation requiring the hearing describes the proceeding as an emergency. It should be noted that an emergency rulemaking proceeding omits a recommended decision with the opportunity to file comments thereon. Evidence will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposal.

#### Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed amendment on small entities and has prepared this initial regulatory flexibility analysis. The RFA provides that when preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This initial regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities. The legal basis for this action is discussed in the preceding section.

This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual

gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses represent approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as "small businesses," representing about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this initial regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed

amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts. Possible changes to the Class III and Class IV price formulas should not have any special impact on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

#### Preliminary Analysis

In order to assist the industry in considering the effects of various types of proposals, the Department conducted a preliminary analysis. While the proposals seek to amend the product pricing formulas used to price milk

regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also would affect the prices of regulated milk classified as Class I and Class II. Of those proposals submitted, six were selected for preliminary quantitative analysis. Selection of a proposal for analysis should not be considered to be a judgement on the merit of a proposal. Proposals were selected either as reflective of a significant number of proposals received or to capture the possible range of impacts of the proposals submitted. For a number of reasons, including lack of authority, lack of detail presented by the proponent, and lack of data, all proposed amendments could not be analyzed.

**Scope of Analysis.** The scope of the proposed amendments were segmented into four categories for analysis. The categories were: (A) Butter and Butterfat Prices and Factors; (B) Cheese and Protein Prices and Factors; (C) Whey Powder and Other Solids Prices and Factors; and (D) Nonfat Dry Milk and Nonfat Solids Prices and Factors.

#### *A. Butter and Butterfat Prices and Factors*

The first proposal selected for analysis would subtract six cents from the National Agricultural Statistic Service (NASS) Grade AA butter price prior to inputting it into the Class IV and Class III formulas for purposes of establishing Class II, Class III, and Class IV butterfat prices, as well as the advanced Class I butterfat price.

The second proposal selected for analysis would substitute the make allowance determined by a study performed by the Rural Business-Cooperative Service (RB-CS) for the current butter make allowance. As a proxy for a study result expected to be presented at the hearing, the butter make allowance result of the most recent RB-CS study available was used in the analysis.

#### *B. Cheese and Protein Prices and Factors*

One proposal was selected for preliminary analysis. The selected proposal would reduce the make allowance per pound of cheese from the current level of \$0.1702 to \$0.142. The proposed make allowance of \$0.142 is the level determined by the most recent RB-CS study available of costs of manufacturing cheddar cheese before the addition of marketing costs or return on investment.

#### *C. Whey Powder and Other Solids Prices and Factors*

One proposal was selected for preliminary analysis. The selected proposal would increase the make allowance for dry whey from \$0.137 per pound to \$0.171 per pound.

#### *D. Nonfat Dry Milk and Nonfat Solids Prices and Factors*

The first proposal selected for preliminary analysis would replace the current make allowance for nonfat dry milk of \$0.137 per pound with a make allowance of \$0.1563 per pound.

The second proposal selected for analysis would replace the current make allowance, \$0.137, with the make allowance determined by an RB-CS study expected to be made available at the hearing. The most recent RB-CS study available of the cost of manufacturing nonfat dry milk placed the cost at \$0.126 per pound before the addition of a marketing cost or a return on investment.

**Scope of Analysis.** Impacts were measured as changes from the model baseline as adapted from the USDA dairy baseline. That baseline—a national annual projection of the supply-demand-price situation for milk and dairy products—was the basis for the model projection. Both the USDA baseline and the model baseline assume: (1) The price support program would end on December 31, 2000; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue unchanged.

It was necessary to make some simplifying assumptions in order to provide some preliminary analysis prior to the hearing. It is anticipated that the proponents of the various proposals will provide some analysis as to their expectations of the adoption of their proposals. At this point in time, AMS has made no judgement of the impacts of any proposal on orderly marketing of milk, including the willingness or ability of manufacturers to accept regulated milk for manufacturing, or of the long term existence of sufficient capacity to clear the market of milk surplus to the fluid market. The Federal order share of U.S. milk marketings is about 67 percent. About 60 percent of all milk manufactured is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly,

the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices. Therefore, U.S. milk marketings are estimated as a function of the U.S. all-milk price, and the Federal order share is estimated as a function of the Federal order all-milk price relative to the U.S. all-milk price.

Cooperatives manufacture about 40 percent of the cheese and about 70 percent of the butter and nonfat dry milk manufactured nationally, and sell such dairy products in wholesale and retail markets in competition with other manufacturers. In estimating the change in the all-milk price and in cash receipts from milk marketings, it is assumed that these proposals will have a lesser effect on farm prices and receipts of member milk processed and marketed by cooperatives than on prices and receipts of milk manufactured by proprietary processors. A baseline assumption is that a cooperative passes through to its members the best price and best return on investment that it can. A higher minimum Federal order price could result in cooperatives paying higher monthly prices for milk, but would result in lower returns on investments paid at the end of the year. Total cash receipts for member milk marketings processed by the cooperative would be changed only by changes in wholesale product prices. The proposals under consideration are expected to have a minimal secondary impact on the wholesale prices for butter, cheese or nonfat dry milk. Therefore, total revenues from the sale of these products by manufacturers will be virtually unchanged.

In addition to altering the sharing of manufacturing proceeds between manufacturing plants and producers, these proposals have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on the Class I price depend upon how proposals affect the Class III price relative to the Class IV price since Class I prices are based on the higher of the Class III or IV prices.

We have assumed that plants would pay a higher or lower minimum price and that plant pooling decisions would be unchanged from the baseline. Changes in pay prices and cash receipts to cooperative members for raw milk marketed by cooperatives or to non-members for milk marketed to proprietary handlers would be fully reflected by changes in the Federal order blend price, given changes in Federal minimum class prices and uses. Changes in pay prices and cash receipts to cooperative members for milk manufactured by cooperatives are

additionally influenced by the changes in market prices for manufactured milk resulting from changes in manufactured product prices. For the 40 percent of the Class III milk and 70 percent of the Class IV milk manufactured by cooperatives, it is assumed that differences between the model generated average price for manufactured milk and the average of the Class II, Class III, and Class IV prices would be passed on to producer-members in the form of higher or lower pay prices. In the case of proprietary plants, it is assumed that the differences would be absorbed by the plants. However, in the case of a loss, proprietary manufacturing plants could de-pool milk to equalize their margins with cooperative plant margins. We hope proponents will shed some light on this issue.

Retail prices of fluid milk and Class II soft manufactured products are assumed to respond penny for penny to changes in the milk cost of these products. Wholesale and retail margins are assumed unchanged from baseline for all proposals analyzed. Demands for products in these classes are functions of price, per capita consumption and population. Wholesale prices for cheese, butter and nonfat dry milk reflect supply and demand for these products. The milk supply for manufacturing these hard products is the result of milk marketings minus the volumes demanded for Class I and Class II products. The remaining volume is allocated to Class III and Class IV according to returns to manufacturing in each class. Demands for products in these classes are functions of price, per capita consumption and population.

### Summary Preliminary Results

The results of the proposed amendments to the Class III and Class IV formulas are summarized using six-year, 2001–2005, average changes from the model baseline. Averages tend to mask year-to-year changes in the variables. These results in the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices. In addition, the advanced Class I price mover is driven by the higher of the Class III or Class IV prices; both of which are used over the period, and do switch depending on the scenario. The preliminary results are summarized in Table 1.

Changes in Class III and Class IV minimum pricing formulas have secondary effects beyond the initial price change because of the impacts on Class I and Class II prices and uses. If

Class III or Class IV minimum prices are reduced, minimum Class I or II prices are also reduced. These lower prices result in increased use of milk in Class I or II, reducing the volume of milk available for Class III and Class IV uses. In turn, the prices for cheese, butter, and nonfat dry milk increase. The market prices for milk in manufactured uses increase with manufactured product price increases. The opposite can be the case with a proposal that increases either the minimum Class III or Class IV price. Thus, the market does tend to offset large changes over time and move the results towards the baseline.

### Butter and Butterfat Prices and Factors

The butter pricing scenarios are similar in effect and direction, differing only in magnitude in the butterfat price equation ( $BF \text{ price} = (\text{NASS butter price} - 0.114) / 0.82$ ). Using February 2000 prices and holding them constant, increases in the make allowance from \$0.114 to \$0.133 per pound reduces the Class IV price by \$0.08 per hundredweight. Subtracting 6 cents from the NASS butter price before use in the formula yields a \$0.26 reduction in the Class IV price.

For the 2001–2006 period, subtracting 6 cents from the butter price has about double the effect on marketings and cash receipts of raising the make allowance by 1.9 cents. The butterfat price and minimum Class IV and Class II prices fall in turn. The Class III price is increased slightly with the inverse effect on the butterfat price in the cheese protein price calculation. The increase in Class II use in response to the price decline reduces milk allocated to Class III and Class IV. This results in slight wholesale price increases for cheese, butter, and nonfat dry milk.

*Producers.* Changing the make allowance from \$0.114 to \$0.133 results in a decline of \$0.002 per hundredweight in the Federal order blend for the 2001–2006 period. The average all-milk price for producers in Federal orders declines by only \$0.001, reflecting the slightly higher prices for cheese, butter, and nonfat dry milk. Marketings decrease by 39.8 million pounds and cash receipts decrease by \$7.0 million from baseline receipts of \$16,116.8 million.

Deducting 6 cents from the NASS butter price decreases the 6-year Federal order blend by \$0.006 per hundredweight and decreases the average all-milk price for Federal order producers by only \$0.003, reflecting the higher cheese, butter, and nonfat dry milk prices. Cash receipts decrease by \$14.0 million.

*Milk Manufacturers and Processors.* Soft product manufacturers benefit from the lower minimum Class II prices, driven by a lower average Class IV price. Federal order manufacturing receipts decline by \$8.7 million with the \$0.133 make allowance, and \$24.6 million with the 6-cent deduction in the butter price. The decrease in total Federal order marketings and an increase in Class II use results in less milk moving to Class III and IV in the Federal order marketing areas. Thus, the reduction in the volume of milk used in Class III and Class IV results in increases in the wholesale prices for cheese, butter, and nonfat dry milk. In the case of Class IV, handlers benefit as well from lower Class IV prices. Cheese manufacturers face an increased Class III price.

*Consumers.* The fluid milk price increases by \$0.004 with the \$0.133 increase in make allowance, and is increased by \$0.027 per hundredweight with the 6-cent reduction in the NASS butter price. The larger change converts to 0.3 cents per gallon. Thus, the retail price increase would be expected to be no greater than one cent per gallon.

### Cheese Make Allowance Reduction

Reducing the cheese make allowance from \$0.1702 to \$0.142 affects the Class III price through the protein price. The Class III formula is:  $\text{Protein Price} = ((\text{Cheese price} - 0.1702) \times 1.405) + (((\text{Cheese price} - 0.1702) \times 1.582) - \text{Butterfat price}) \times 1.28$ . Using February 2000 prices, reducing the make allowance results in a \$0.29 per hundredweight increase in the Class III price.

For the 2001–2006 analytical period, the Class III price increases by an average of \$0.21 per hundredweight, and Class II and IV prices drop by \$0.09. The Class III price increase results in an increase in the Class I price of \$0.19 per hundredweight. Consumers respond to the Class I price increase by reducing fluid consumption and Class I use declines. The reduction in Class I use is diverted to Class III and Class IV use. Consumers require lower prices for cheese, butter, and nonfat dry milk to clear the product markets of higher volumes. While the blend price increases, the increase in the all-milk price for Federal order producers is somewhat smaller because the lower product prices drive manufactured milk values below Federal order prices, and this is reflected in cooperative producer pay prices.

*Producers.* Reducing the cheese make allowance from \$0.1702 to \$0.142 results in a \$0.15 increase in Federal order blend prices. The average all-milk price for Federal order producers,

however, increases by \$0.09 per hundredweight, reflecting the lower cheese, butter, and nonfat dry milk prices. Marketings increase by about 627.9 million pounds, on average, and cash receipts increase by \$198.2 million from baseline average receipts of \$16,116.8 million.

*Milk Manufacturers and Processors.* Soft product manufacturers benefit from the lower minimum Class II prices, driven by a lower average Class IV price. Federal order manufacturing receipts increase by \$123.5 million, with increases in the use of Class III and Class IV milk, and a Class III price increase.

*Consumers.* The fluid milk price increase of \$0.19 per hundredweight, on average, converts to 1.6 cents per gallon. Thus average retail fluid price increases would be expected to be no greater than 2 cents per gallon for the 2001–2006 period.

#### *Whey Make Allowance Reduction*

Increasing the whey make allowance from \$ 0.137 to \$0.171 affects the Class III price through the other solids price formula: Other Solids Price = (Dry whey price—0.137)/0.968. Using February 2000 prices, increasing the make allowance results in a \$0.20 per hundredweight reduction in the Class III price.

For the 2001–2006 analytical period, the Class III price decreases by an average of \$0.17 per hundredweight and the Class I price drops by \$0.07. Consumers respond to the Class I price decline by increasing fluid consumption and Class I use increases, resulting in reduced milk in Class III and Class IV use. The reduced volumes on the product markets result in higher prices for cheese, butter, and nonfat dry milk. While the blend price decreases, the decrease in the all-milk price received by Federal order producers is somewhat smaller because of the higher product prices.

*Producers.* Increasing the whey make allowance from \$ 0.137 to \$0.171 results in an average \$0.09 decrease in Federal order blend prices. The average all-milk price for producers in Federal orders, however, declines by an average of only \$0.06 per hundredweight, reflecting the higher cheese, butter, and nonfat dry milk prices. Marketings decline by an average of about 329.0 million pounds and cash receipts decrease by an average \$113.1 million from baseline receipts of \$16,116.8 million.

*Milk Manufacturers and Processors.* Soft product manufacturers face a slightly higher minimum Class II price,

driven by a slightly higher average Class IV price. Federal order manufacturing receipts decrease by an average of \$86.3 million, with a decrease in Class III and Class IV uses and a Class III price decrease. Wholesale prices for cheese, butter, and nonfat dry milk increase with reduced volumes of product.

*Consumers.* The average fluid milk price decrease of \$0.07 per hundredweight converts to 0.6 cents per gallon. Thus retail fluid prices would be expected to be about 1 cent per gallon lower for 2001–2006.

#### *Nonfat Dry Milk Make Allowance Changes*

Two nonfat solids price (NFS price=(NASS NDM price—0.137)/1.02) proposals were analyzed, in which the make allowance was increased by 1.9 cents to \$0.156 per pound in one case, and decreased by 1.1 cents to \$0.126 per pound in the other. Using February 2000 prices, increasing the nonfat dry milk make allowance to \$0.156 decreases the minimum Class IV price by \$0.16 per hundredweight. Decreasing the make allowance to \$0.126 results in an increase of \$0.09 per hundredweight in the Class IV price.

For the 2001–2006 analytical period, increasing the make allowance in the nonfat solids price decreases the Class IV price and therefore the Class II price. With less milk available to make cheese, the Class III price increases slightly due to an increase in the cheese price.

On the other hand, a decrease in the make allowance would increase the Class II and Class IV minimum prices during 2001–2006. This increase in Class IV price leads the Class IV price to be the Class I price mover during several of the years during the period of the analysis. With less milk going to Class I and Class II due to higher prices, the Class III price decreases slightly due to more milk available for cheese, resulting in slightly lower wholesale prices for cheese, butter, and nonfat dry milk.

*Producers.* The average all-milk price for producers in Federal orders would decrease by \$0.007 per hundredweight during the analytical period with the make allowance increased to \$0.156 per pound. Marketings decrease by 102.0 million pounds, on average, and cash receipts decrease by an average of \$22.7 million from baseline receipts of \$16,116.8 million.

The average all-milk price increases by \$0.007 per cwt. with the make allowance reduced to \$0.126 per pound, which leads to an annual average increase in milk marketings of 78.9

million pounds in the Federal order system. Total cash receipts increase by an average of \$19.2 million over the six-year period.

*Milk Manufacturers and Processors.* With the nonfat dry milk make allowance at \$0.156, Class II price declines, on average, by \$0.14 per hundredweight from the baseline, benefitting soft product manufacturers with increased consumption of Class II dairy products. The decrease in total marketings and the increase in Class II volume is sufficient to reduce Class III and Class IV volumes and cause a slight increase in the wholesale prices for cheese, butter, and nonfat dry milk. The value of milk for manufacturing in the Federal orders decrease by \$23.5 million, on average, over the 2001–2006 period.

When decreasing the nonfat dry milk make allowance to \$0.126, Class I prices increase by \$0.02 per hundredweight, Class II prices increase by \$0.07 per hundredweight, and about 16 million pounds moves into Class III and IV use. Coupled with the increase in marketings of 79 million pounds, the total volume of milk available for manufacturing would increase by about 87 million pounds annually. The value of milk used to manufacture dairy products increases by an annual average of \$12.1 million.

*Consumers.* The increase in the fluid milk price with an increase in the make allowance to \$0.156 is less than a half cent per hundredweight. Reducing the make allowance proposals for the nonfat solids price to \$0.126 would increase the fluid milk price \$0.02 per hundredweight, which translates into a retail price increase of less than a cent for a gallon of milk. Consumers would spend \$0.8 million more on fluid milk products under the \$0.156 make allowance, and \$7.1 million more under the \$0.126 make allowance. Consumption of fluid milk products would decrease slightly under both proposals. The consumption of manufactured products would decrease on average by 101.5 million pounds under the make allowance of \$0.156 and increase on average by 94.7 million pounds under the make allowance of \$0.126.

Interested parties are invited to present evidence or testimony at the hearing concerning the economic impact of any of the proposals on producers, handlers, or the national economy.

TABLE 1.—SUMMARY OF IMPACTS OF CLASS III/IV PRICING PROPOSAL ON ALL FEDERAL ORDERS, SIX-YEAR AVERAGE, 2001–2006

Change in	Units	Baseline	Butter make allowance of \$0.133 per pound	NASS butter price minus \$0.06	Cheese make allowance of \$0.142 per pound	Whey make allowance of \$0.171 per pound	NDM make allowance of \$0.156 per pound	NDM make allowance of \$0.126 per pound
Federal order minimum prices:								
Class I price .....	\$/cwt .....	15.25	0.004	0.027	0.193	-0.069	0.002	0.018
Class II price .....	\$/cwt .....	13.14	-0.072	-0.232	-0.092	0.033	-0.142	0.071
Class III price .....	\$/cwt .....	12.57	0.017	0.046	0.211	-0.170	0.021	-0.018
Class IV price .....	\$/cwt .....	12.44	-0.072	-0.232	-0.092	0.033	-0.142	0.071
Blend price .....	\$/cwt .....	13.70	-0.002	-0.006	0.145	-0.093	-0.012	0.010
All-milk price, F.O. producers <sup>1</sup> .	\$/cwt .....	14.07	-0.001	-0.003	0.094	-0.058	-0.007	0.007
U.S. Product prices:								
Cheese price .....	\$/lb .....	1.4148	0.0009	0.0022	-0.0079	0.0031	0.0021	-0.001
Butter price .....	\$/lb .....	1.3095	0.0017	0.0042	-0.0170	0.0059	0.0040	-0.0041
NDM price .....	\$/lb .....	0.9992	0.0003	0.0007	-0.0022	0.0009	0.0006	-0.0005
Whey price .....	\$/lb .....	0.1850	0.0000	0.0001	-0.0006	0.0001	0.0001	-0.0002
Federal order class use:								
Class I use .....	mil. lbs .....	45,545.4	-1.5	-11.5	-83.4	30.4	-0.4	-8.0
Class II use .....	mil. lbs .....	13,499.6	12.4	47.1	95.6	-46.4	22.1	-7.8
Class III use .....	mil. lbs .....	50,229.8	-4.8	-11.7	40.7	-15.9	-11.0	9.6
Class IV use .....	mil. lbs .....	5,096.2	-45.9	-101.1	574.9	-297.2	-112.6	85.1
Total marketings .....	mil. lbs .....	114,371.1	-39.8	-77.3	627.9	-329.0	-102.0	78.9
Federal order cash receipts:								
Total .....	mil. dol .....	16,116.8	-7.0	-14.0	198.2	-113.1	-22.7	19.2
Fluid .....	mil. dol .....	7,314.1	1.6	10.6	74.7	-26.8	0.8	7.1
Manufacturing .....	mil. dol .....	8,802.8	-8.7	-24.6	123.5	-86.3	-23.5	12.1

<sup>1</sup> Reflects Federal order minimum prices and over order premiums.

### Civil Rights Impact Statement

A public hearing is being held in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that requires the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000.

Pursuant to Departmental Regulation (DR) 4300-4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) The purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who

choose to deliver milk to handler regulated under a Federal order will receive the minimum blend price. It also was concluded that "one of the reasons for success of the Federal milk order program is that all producers benefit through assistance in developing steady, dependable markets, reducing price instability and unnecessary price fluctuations, and assurances of a minimum price for their milk. With this assurance, producers are more willing to make the significant cost investments in milk cows and equipment needed to produce high-quality milk. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers."

The issue of the hearing being announced is an issue that was addressed as part of Federal milk order consolidation and reform. Establishing a representative make allowance in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. However, the process of

dividing the pool among all producers delivering milk to those regulated handlers is not affected. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. Thus, testimony concerning any possible civil rights impact of the proposals being considered should be presented at the hearing.

Copies of the Civil Rights Impact Analysis can be obtained from AMS Dairy Programs at (202) 720-4392; any Milk Market Administrator office; or via the Internet at: [www.ams.usda.gov/dairy/](http://www.ams.usda.gov/dairy/).

### Executive Order 12988, Civil Justice Reform

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

**Request for Public Input**

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

**List of Subjects in 7 CFR Parts 1001 Through 1135**

Milk marketing orders.

**PARTS 1001 THROUGH 1135— [AMENDED]**

The authority citation for 7 CFR Parts 1001 through 1135 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, 7253, Pub. L. 106–113, 115 Stat. 1501.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., Select Milk Producers, Inc.; and National Farmers Organization:

Proposal No. 1: In § 1000.50, amend the introductory text and paragraph (q) by changing the source of product prices in the pricing formulas from the National Agricultural Statistical Service (NASS) to the Chicago Mercantile Exchange (CME), as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows: The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a simple average of the most recent 2 weekly prices announced by the Chicago Mercantile Exchange (CME) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (p) of this section shall be based on a simple average for the preceding month of weekly prices announced by CME on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

\* \* \* \* \*

(q) Advanced pricing factors. For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the 2 most recent CME average weekly prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the 2 most recent CME average weekly prices announced before the 24th day of the month, compute a protein price and an other solids price;

\* \* \* \* \*

(2) \* \* \* (i) Following the procedure set forth in paragraph (m) of this section, but using the 2 most recent CME average weekly prices announced before the 24th day of the month, compute a nonfat solids price; and (ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing the 2 most recent CME average AA Butter prices announced before the 24th day of the month,

subtracting 11.4 cents from this average, and dividing the result by 0.82.

Proposed by Pam Festge: Proposal No. 2: Remove the marketing allowance from the manufacturing allowance factor in all product price formulas.

**Butter/Butterfat Price Proposals**

Proposed by Suiza Foods Corporation, Milk Industry Foundation (MIF), International Ice Cream Association (IICA), and Wells' Dairy, Inc.:

Proposal No. 3: (To affect Class II, III and IV butterfat prices). Reduce the NASS AA Butter survey price used in the butterfat price computation by 6 cents (the Wells' Dairy proposal does not specify an amount) before computing the butterfat price, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, minus 6 cents, less 11.4 cents, with the result divided by 0.82.

\* \* \* \* \*

Proposed by MIF, IICA, and Wells' Dairy, Inc.:

Proposal No. 4: (Reduce the butterfat price for Class I). Reduce the NASS AA Butter survey price used in the advanced butterfat price computation by 6 cents (the Wells' Dairy proposal does not specify an amount) before computing the advanced butterfat price, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(q) \* \* \* (3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month minus 6 cents, less 11.4 cents, and dividing the result by 0.82.

\* \* \* \* \*

Proposed by Schreiber Foods, Inc.:

Proposal No. 5: Reduce butterfat prices by reducing the CME butter price by 9 cents before computing the butterfat price, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-

hundredth cent, shall be the simple average for the preceding month of weekly prices announced by CME less 9 cents, minus 11.4 cents, with the result divided by 0.82.

\* \* \* \* \*

Proposed by National Milk Producers Federation (NMPF):

Proposal No. 6: Substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, for the make allowance in the current rule, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less the RB-CS survey report manufacturing cost for butter plus \$.0015 cents, with the result divided by 0.82.

\* \* \* \* \*

Proposed by South East Dairy Farmers Association (SE Dairy Farmers):

Proposal No. 7: Substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000 for the make allowance in the current rule, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(1) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less the RB-CS survey report manufacturing cost for butter, with the result divided by 0.82.

\* \* \* \* \*

Proposed by NMPF, South East Dairy Farmers Association (SE Dairy Farmers), Land O'Lakes, Inc., and Dairy Farmers of America, Inc. (DFA):

Proposal No. 8: Incorporate a Class IV butterfat price in the pricing structure by subtracting 6 cents from the butterfat price, inserting a new paragraph (l) and renumbering the current paragraphs § 1000.50.(l) through (q) as paragraphs § 1000.50.(m) through (r), as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(l) Class IV butterfat price. The Class IV butterfat price per pound shall be the

butterfat price pursuant to paragraph (m) of this section less \$.06.

\* \* \* \* \*

**Cheese/Protein Price Proposals**

Proposed by Deer River Bulk Milk Cooperative, Jefferson Bulk Milk Cooperative, Lowville Producers Dairy Cooperative, and Henry L. Parr (Headspring Farm):

Proposal No. 9: To return the Class III (protein) make allowance to its previous (proposed rule) level, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) Protein price. \* \* \*

(2) Subtract 12.7 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 12.7 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

\* \* \* \* \*

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., Select Milk Producers, Inc.:

Proposal No. 10: To modify the protein price by using the CME 40-lb. block cheddar cheese price, reduce the manufacturing allowance from .1702 to .142, and change the 1.582 factor in the butterfat portion of the protein price formula to 1.61, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute the simple average CME price for 40-lb. block cheese reported for the month;

(2) Subtract 14.2 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 14.2 cents from the price computed pursuant to paragraph (n)(1)

of this section and multiply the result by 1.61;

\* \* \* \* \*

Proposed by National Farmers Organization:

Proposal No. 11: Change the 1.582 factor in the butterfat portion of the protein price formula to 1.60, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) \* \* \*

(3) \* \* \*

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.60;

\* \* \* \* \*

Proposed by the National Cheese Institute:

Proposal No. 12: Include price data for cheddar cheese in 640-pound blocks in addition to 40-pound blocks and 500-pound barrels, and to use adjustors for the 640-pound block and 500-pound barrel prices based on actual industry data on the difference in manufacturing costs between cheddar cheese packaged in blocks and barrels, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) through (iii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month;

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the Department for the month plus the difference between the 40-lb. block price and the 500-pound barrel price; and

(iii) The U.S. average NASS survey price for 640-pound block cheddar cheese reported by the Department for the month plus the difference between the 40-lb. block price and the 640-pound block price;

\* \* \* \* \*

Proposed by National Farmers Organization, Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 13: Adjust 40-pound block cheese prices for moisture, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) through (iii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese (39 percent moisture) reported by the Department for the month;

\* \* \* \* \*

Proposed by National Milk Producers Federation:

Proposal No. 14: In the protein price formula, substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, for the make allowance in the current rule, and to amend the 1.582 factor in the butterfat portion of the protein price formula to 1.60, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) Protein price. \* \* \*

(2) Subtract the sum of the RB-CS survey report manufacturing cost for cheddar cheese plus \$.0015 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract the sum of the RB-CS survey report manufacturing cost for cheddar cheese plus \$.0015 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.60;

\* \* \* \* \*

Proposed by Dairy Farmers of America, Inc.:

Proposal No. 15: Reduce the manufacturing allowance used in the protein price formula from .1702 to .1508, (and support the amendment of the 1.582 factor in the butterfat portion of the protein price formula to 1.60), as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) Protein price. \* \* \*

(2) Subtract 15.08 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 15.08 from the price computed pursuant to paragraph (n)(1)

of this section and multiply the result by 1.60;

\* \* \* \* \*

Proposed by the American Farm Bureau Federation and SE Dairy Farmers:

Proposal No. 16: Replace the current \$.1702 manufacturing allowance for cheddar cheese with the RB-CS survey cost, reviewed annually. In addition, the American Farm Bureau Federation proposed that if California plants are not adequately represented in the survey, published California costs of manufacture be weighted with the RB-CS cost.

Proposed by Michigan Milk Producers Association:

Proposal No. 17: Simplify the Class III protein price formula, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(n) Protein price.

(2) Subtract 17.02 cents and the quantity obtained by multiplying the butterfat price by .3732 from the price computed pursuant to paragraph (n)(1) of this section and divide the result by .2915;

\* \* \* \* \*

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 18: Include as a component of the Class III price a value for butterfat in whey cream.

**Whey Powder/Other Solids**

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., and Select Milk Producers, Inc.:

Proposal No. 19: Change the source of the dry whey price used to calculate the other solids price from the NASS survey to the CME average dry whey price, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME dry whey price for the month minus 13.7 cents, with the result divided by 0.968.

\* \* \* \* \*

Proposed by the National Cheese Institute:

Proposal No. 20: Replace the \$.137 manufacturing allowance for whey powder with an actual industry cost of manufacturing this product; i.e., \$.171, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus (the actual industry cost of manufacturing whey powder), with the result divided by 0.968.

\* \* \* \* \*

Proposed by National Milk Producers Federation:

Proposal No. 21: Substitute a dry whey make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, for the make allowance in the current rule, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for dry whey plus \$.0015 cents, with the result divided by 0.968.

\* \* \* \* \*

Proposed by SE Dairy Farmers:

Proposal No. 22: Substitute a dry whey make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000 for the make allowance in the current rule, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for dry whey with the result divided by 0.968.

\* \* \* \* \*

**Nonfat Dry Milk/ Nonfat Solids**

Proposed by National Milk Producers Federation:

Proposal No. 23: Replace the nonfat dry milk make allowance in the current

rule with one using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for nonfat dry milk plus \$.0015 cents, with the result divided by 1.02.

\* \* \* \* \*

Proposed by SE Dairy Farmers:

Proposal No. 24: Replace the nonfat dry milk make allowance in the current rule with one using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for nonfat dry milk, with the result divided by 1.02.

\* \* \* \* \*

Proposed by Associated Milk Producers, Inc.:

Proposal No. 25: Increase the current nonfat dry milk make allowance of 13.7 cents to 15.63 cents, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 15.63 cents, with the result divided by 1.02.

\* \* \* \* \*

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., and Select Milk Producers, Inc.:

Proposal No. 26: Multiply the CME nonfat dry milk price minus the manufacturing allowance by 1.02 instead of dividing by 1.02, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME nonfat dry milk price extra grade for the month less 13.7 cents, with the result multiplied by 1.02.

\* \* \* \* \*

Proposed by National Farmers Organization:

Proposal No. 27: Divide the CME nonfat dry milk price minus the manufacturing allowance by .99 instead of by 1.02, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME nonfat dry milk price extra grade for the month less 13.7 cents, with the result divided by .99.

\* \* \* \* \*

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 28: Divide the nonfat dry milk price minus the manufacturing allowance by .975 instead of by 1.02, as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 13.7 cents, with the result divided by .975.

\* \* \* \* \*

**Incorporate Cost of Production Factor In Class III and IV Prices**

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, Kenneth Mahalko, National Farmers Union, Sean W. Nolan:

Proposal No. 29: Incorporate cost of production into Class III and Class IV formulas.

**Class I Price**

Proposed by Family Dairies, USA, and Midwest Dairy Coalition:

Proposal No. 30: Assure that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices

**Class II Skim and Butterfat Prices**

Proposed by Galloway Company and Hershey Foods:

Proposal No. 31: Although the Class II price formula is not at issue in this proceeding, proponents expressed concern about the effect that any changes made to the Class IV formula that would increase the Class IV skim milk and butterfat prices would have on the Class II prices. They want to assure that any such increases would result in a corresponding reduction in the Class II differential. Galloway and Hershey urged that the current relationship between Class II prices and the prices for manufactured dairy products that are alternative ingredients in Class II products not be changed.

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 32: Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

**Class III and Producer Butterfat Prices**

Proposals to change the Class IV butterfat price that would not also result in changes to the Class III butterfat price raise the issue of whether the butterfat price for milk used in Class III should be based directly on the value of butterfat in cheese instead of the value of butterfat in butter. One of the primary considerations for incorporating some of the value of butterfat in cheese into the protein price was to maintain a single butterfat price for milk used in manufactured products. Changing the protein price calculation to reflect only the value of protein in cheese, with a separate Class III butterfat price calculation is an issue that should be considered at the same time as the proposals to reduce the Class IV butterfat price. Data and testimony concerning yield factors specific to butterfat in cheese would be appropriate additions to the hearing record.

In addition, the possibility of having four different butterfat prices raises the issue of whether the component pricing orders, like the four orders that price and pool only skim and butterfat, should pool butterfat values for payment to producers instead of passing through the Class III butterfat price. Testimony on this issue also would be appropriate.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture, Office of the Administrator, Agricultural Marketing Service, Office of the General Counsel, Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: April 6, 2000.

**Kathleen A. Merrigan,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 00-9172 Filed 4-13-00; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 99-SW-78-AD]

**Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, that currently requires conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. This action would require the same corrective actions as the existing AD and would add another fuel filter part number to the applicability. This proposal is prompted by jammed fuel filter by-pass valves. The actions specified by the proposed AD are intended to prevent engine power loss due to fuel starvation, an engine

flameout, and a subsequent forced landing.

**DATES:** Comments must be received on or before June 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-78-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed AD may be obtained from American Eurocopter Corporation, Technical Support, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone 800-232-0323, fax 972-641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, Southwest Region, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone (817) 222-5296, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed

comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-SW-78-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-78-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

On June 8, 1999, the FAA issued AD 99-13-02, Amendment 39-11195 (64 FR 32399, June 17, 1999), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters. AD 99-13-02 requires, within 25 hours time-in-service (TIS) and any subsequent time that the fuel filter clogged caution lights illuminate, conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. That action was prompted by reports of jammed fuel filter by-pass valves discovered during routine maintenance. That condition, if not corrected, could result in engine power loss due to fuel starvation, an engine flameout, and a subsequent forced landing.

Since the issuance of that AD, the Direction Generale De L'Aviation Civile (DGAC) has issued revised AD's that add another fuel filter to the previous applicability list. The revised DGAC AD's apply to helicopters with the following fuel filters installed:

Vendor Part No.	Eurocopter France Part No.
-4020P25 .....	(704A44620031)
-4020P25-1 .....	(704A44620034)
-4020P25-2 .....	(704A44620035)
-4020P25-3 .....	(704A44620036)
-4020P25-11 .....	(704A44620037)

The DGAC, the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. The DGAC advises that jammed valves could result in power loss due to fuel starvation, which could cause one or both engines to flameout. The DGAC issued AD's 1998-318-071(A)R2 and 1998-319-012(A)R2, both dated July 28, 1999, applicable to Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. (Model AS 332C1 does not have a United States type certificate.)

The FAA has reviewed Eurocopter France Service Telex 00087 (Service

Bulletin No. 01.00.56 R1) dated June 17, 1999, which describes procedures for verifying that the valve will correctly open and close in each engine fuel filter and conducting a filter clogging warning test on helicopters with certain fuel filters installed.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters of the same type designs, the proposed AD would supersede AD 99-13-02. In addition to the requirements in AD 99-13-02, the proposed AD would add a fuel filter, P/N 704A44620037, to the applicability. The actions are required to be accomplished in accordance with the service telex described previously.

The FAA estimates that one helicopter of U.S. registry would be affected by the proposed AD, that it would take approximately 3 work hours to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$180, assuming no valve would need to be replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39-11195 (64 FR 32399, June 17, 1999) and by adding a new airworthiness directive (AD) to read as follows:

**Eurocopter France:** Docket No. 99-SW-78-AD. Supersedes AD 99-13-02, Amendment 39-11195, Docket No. 99-SW-17-AD.

**Applicability:** Eurocopter France Model AS 332C, L, L1, and L2 helicopters, with any of the following part-numbered fuel filters installed, certificated in any category:

Vendor Part No.	Eurocopter France Part No.
-4020P25 .....	(704A44620031)
-4020P25-1 .....	(704A44620034)
-4020P25-2 .....	(704A44620035)
-4020P25-3 .....	(704A44620036)
-4020P25-11 .....	(704A44620037)

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

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

To prevent power loss due to fuel starvation, an engine flameout, and a subsequent forced landing, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and after any subsequent flight during which either fuel filter clogged caution light illuminates:

(1) Verify that the fuel filter by-pass valve (valve) is correctly closed in each engine fuel filter in accordance with paragraph CC.1), Eurocopter France Service Telex 00087 (Service Bulletin No. 01.00.56 R1), dated June 17, 1999 (SB).

(2) After replacing both filter cartridges with airworthy filter cartridges, each helicopter may be operated on a one-time direct flight to a location where the requirements of paragraph (a) of this AD must be accomplished before further flight.

(3) Conduct a "filter" clogging warning test (test) in accordance with paragraphs CC.2), CC.2)A) and CC.2)B) of the SB.

(4) If a jammed valve (open or closed) is detected during the test, clean the valve in accordance with paragraph CC.2)B) of the SB or replace the valve with an airworthy valve. Repeat the requirements of paragraph (a)(3) of this AD.

(5) When the test result is satisfactory, repeat the requirements of paragraph (a)(1) of this AD.

(b) Within 25 hours TIS, insert a copy of this AD into the Rotorcraft Flight Manual (RFM) or make the following pen and ink addition to the RFM Emergency Procedure for fuel filter clogged caution light illumination: "If both fuel filter clogged caution lights illuminate, land as soon as practicable."

(c) If both filter clogged caution lights illuminate, after landing, either:

(1) Accomplish the requirements of paragraph (a) of this AD before further flight, or,

(2) Replace both filter cartridges with airworthy filter cartridges and conduct a one-time direct flight to a location where the requirements of paragraph (a) of this AD must be accomplished before further flight.

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Regulations Group.

(e) Special flight permits will not be issued.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD's 1998-318-071(A)R2 and 1998-319-012(A)R2, both dated July 28, 1999.

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

**Henry A. Armstrong,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00-9360 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99-NM-351-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system, and take appropriate corrective actions. This proposed AD would add a requirement to either modify the existing on-board replaceable modules of the flight management guidance computers (FMGC) to incorporate software changes, or replace the FMGC's with new, improved FMGC's; which would terminate the requirements for the AFM revision. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent erroneous navigational calculations, which could result in an increased risk of collision with terrain or other airplanes.

**DATES:** Comments must be received by May 15, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-351-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-351-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-351-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

On October 9, 1997, the FAA issued AD 97-21-10, amendment 39-10163 (62 FR 53939, October 17, 1997), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require revising the FAA-approved Airplane Flight Manual to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system (FMGS), and take appropriate corrective actions. That action was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to ensure that the flightcrew detects and corrects an unintended flight path if certain software anomalies of the FMGS occur, which could result in an increased risk of collision with terrain or other airplanes.

**Actions Since Issuance of Previous Rule**

In the preamble to AD 97-21-10, the FAA specified that the actions required by that AD were considered "interim

action" until final action was identified, at which time further rulemaking action would be considered. Since the issuance of that AD, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that a new standard of the flight management guidance computer (FMGC) includes software changes that improve navigational guidance calculations. The FAA now has determined that further rulemaking action is indeed necessary to require either the modification of all existing on-board replaceable modules of the FMGC's to incorporate software changes, or replacement of all existing FMGC's with new, improved FMGC's, in order to address the unsafe condition and ensure the continued safe operation of those airplanes. This proposed AD follows from that determination and allows opportunity for public comment.

**Explanation of Relevant Service Information**

Airbus has issued the following service bulletins:

- A320-22-1063, Revision 01, dated October 8, 1999.
- A320-22-1064, dated September 15, 1998.
- A320-22-1065, dated October 28, 1998.
- A320-22-1067, Revision 01, dated July 7, 1999.
- A320-22-1068, dated December 9, 1998.
- A320-22-1069, dated February 1, 1999.

These service bulletins describe procedures for either the modification of all existing on-board replaceable modules of the FMGC's to incorporate software changes, or the replacement of all existing FMGC's with new, improved FMGC's. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1999-411-140(B), dated October 20, 1999, in order to assure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

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

type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97-21-10 to continue to require a revision to the Airplane Flight Manual (AFM) to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system, and take appropriate corrective actions. This proposed AD would add a requirement to either modify all existing on-board replaceable modules of the FMGC's to incorporate software changes, or replace all existing FMGC's with new, improved FMGC's; which would terminate the requirements for the AFM revision. The actions would be required to be accomplished in accordance with the service bulletins described previously, as applicable.

This proposed AD also would limit the applicability of the existing AD to airplanes on which a certain modification has been installed or service bulletin has been accomplished, and excludes airplanes on which another modification has been installed or service bulletin has been accomplished.

**Other Relevant Rulemaking**

The FAA previously has issued AD 98-19-08, amendment 39-10750 (63 FR 50503, September 22, 1998), applicable to certain Airbus Model A321 series airplanes. AD 98-19-08 requires revising the AFM to prohibit automatic landings and Category III operations on runways with a magnetic orientation of 170 degrees through 190 degrees inclusive. That amendment provides optional terminating action for the AFM revision.

The modification or replacement action that would be required by this

proposed AD constitutes terminating action for the AFM requirements of AD 98-19-08.

**Cost Impact**

There are approximately 200 Airbus Model A319, A320, and A321 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 97-21-10 and retained in this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would be provided by the manufacturer at no charge to the operators. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$60 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$12,000, or \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39-10163 (62 FR 53939, October 17, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus Industrie:** Docket 99-NM-351-AD. Supersedes AD 97-21-10, Amendment 39-10163.

**Applicability:** Model A319, A320, and A321 series airplanes; certificated in any category; on which any of the Airbus modifications has been installed or any of the Airbus service bulletins has been accomplished, as listed in the following table; except those airplanes on which Airbus Modification 26716, 26799, 26968, or 27831 has been installed; or except those airplanes on which Airbus Service Bulletin A320-22-1063, A320-22-1064, A320-22-1065, A320-22-1067, A320-22-1068, or A320-22-1069 has been accomplished:

Affected model(s)	Airbus modification installed
A319 and A321 .....	25469 (reference Airbus Service Bulletin A320-22-1054).
A319, A320, and A321 .....	26093.
A320 .....	24065 (reference Airbus Service Bulletin A320-22-1040) or 24067 (reference Airbus Service Bulletin A320-22-1039).
A320 .....	25314 (reference Airbus Service Bulletin A320-22-1051) or 25315 (reference Airbus Service Bulletin A320-22-1050).
A320 and A321 .....	24064 (reference Airbus Service Bulletin A320-22-1034) or 24066 (reference Airbus Service Bulletin A320-22-1029).
A320 and A321 .....	25199 (reference Airbus Service Bulletin A320-22-1045) or 25200 (reference Airbus Service Bulletin A320-22-1046).
A320 and A321 .....	25240 (reference Airbus Service Bulletin A320-22-1033) or 25274 (reference Airbus Service Bulletin A320-22-1056).
A319, A320, and A321 .....	26243.

Affected model(s)	Airbus modification installed
A319 and A320 .....	26717.

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

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

To prevent erroneous navigational calculations, which could result in an increased risk of collision with terrain or other airplanes, accomplish the following:

**Restatement of Requirements of AD 97-21-10**

(a) Within 10 days after November 3, 1997 (the effective date of AD 97-21-10, amendment 39-10163), revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997, into the AFM.

**Note 2:** When the temporary revision specified in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02.

**New Requirements of This AD**

(b) Within 18 months after the effective date of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Airbus Service Bulletin A320-22-1063, Revision 01, dated October 8, 1999; A320-22-1064, dated September 15, 1998; A320-22-1065, dated October 28, 1998; A320-22-1067, Revision 01, dated July 7, 1999; A320-22-1068, dated December 9, 1998; or A320-22-1069, dated February 1, 1999; as applicable. Following accomplishment of either paragraph (b)(1) or (b)(2) of this AD, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(1) Modify all existing on-board replaceable modules of the flight management guidance computers (FMGC) to

incorporate software changes in accordance with the Accomplishment Instructions of the applicable service bulletin.

(2) Replace all existing FMGC's with new, improved FMGC's in accordance with the Accomplishment Instructions of the applicable service bulletin.

(c) Accomplishment of either the modification or replacement action required by paragraph (b) of this AD constitutes terminating action for the AFM requirements of paragraph (a) of AD 98-19-08, amendment 39-10750. Following accomplishment of either of those actions, remove the FAA-approved AFM revision required by that AD (Airbus A319/320/321 Airplane Flight Manual Temporary Revision 9.99.99/44, Issue 2, dated March 3, 1998).

**Spares**

(d) As of the effective date of this AD, no person shall install any FMGC part number B546BAM0205, B546CAM0101, B546BCM0204, B398BAM0207, B398AAM0410, B546CCM0101, B546CCM0102, B546CCM0103, or B398BCM0107; unless it has been modified in accordance with this AD.

**Alternative Methods of Compliance**

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

(2) Alternative methods of compliance, approved previously in accordance with AD 97-21-10, amendment 39-10163, are approved as alternative methods of compliance with paragraph (a) of this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

**Special Flight Permits**

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

**Note 4:** The subject of this AD is addressed in French airworthiness directive 1999-411-140(B), dated October 20, 1999.

Issued in Renton, Washington, on April 10, 2000.

**Donald L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 00-9361 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-U**

**FEDERAL TRADE COMMISSION**

**16 CFR Part 423**

**Request for Comments Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods**

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission (the "Commission") is requesting public comments on a proposed exemption to its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods ("the Care Labeling Rule" or "the Rule"). The proposed exemption would permit the Esprit de Corp company to distribute three specific styles of apron camisoles without attaching permanent care labels to the garments, as otherwise required by the Care Labeling Rule. Esprit de Corp petitioned the Commission for the exemption, and submitted samples of the camisoles for consideration. If the petition is granted, care instructions for the camisoles still must be given on a hang tag, or on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

**DATES:** Written comments will be accepted until May 15, 2000.

**ADDRESSES:** Comments should be directed to: Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Comments about this exemption to the Care Labeling Rule

should be identified as “petition for exemption, 16 CFR part 423—Comment.”

**FOR FURTHER INFORMATION CONTACT:**

Constance M. Vecellio, Attorney,  
Federal Trade Commission,  
Washington, DC 20580, (202) 326-2966.

**SUPPLEMENTARY INFORMATION:** The Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971), and amended on May 20, 1983, 48 FR 22733 (1983). The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating “what regular care is needed for the ordinary use of the product.” (16 CFR 423.6(a) and (b)) The Rule defines a care label as a “permanent label or tag \* \* \* that is attached or affixed in such a manner that it will not become separated from the product \* \* \*” (16 CFR 423.1(a))

Section 423.8(b) of the Rule states that manufacturers or importers can ask for an exemption from the requirement of attaching a permanent care label for any textile wearing apparel product or product line if the label would harm the appearance or usefulness of the product. Section 423.8(c) of the Rule states that if an item is exempt from care labeling under subparagraph (b) of section 423.8, the consumers still must be given the required care information for the product, but the care information can be provided on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product. The petitioner claims that the appearance and usefulness of the camisoles would be damaged by attaching permanent care labels.

**List of Subjects in 16 CFR Part 423**

Care labeling of textile wearing apparel and certain piece goods; Trade Practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 00-9266 Filed 4-13-00; 8:45 am]

**BILLING CODE 6750-01-M**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[DE040-1023b; FRL-6577-8]

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan submitted by the State of Delaware, Department of Natural Resources and Environmental Control, Division of Air and Waste Management. The plan establishes emission limitations for existing HMIWIs, and provides for the implementation and enforcement of those limitations. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments must be received in writing by May 15, 2000.

**ADDRESSES:** Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule, with the same title, which is located in the rules section of the **Federal Register**.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: April 3, 2000.

**Bradley M. Campbell,**  
*Regional Administrator, Region III.*

[FR Doc. 00-9234 Filed 4-13-00; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 194**

[FRL-6579-5]

RIN 2060-AG85

**Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability; opening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are: “Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN-190), Revision 4 (March 2000),” “INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN-182), Revision 4 (March 2000),” and “Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN-579), Revision 0 (March 2000).” The documents are available for review in the public dockets listed in **ADDRESSES**. The EPA will use these documents to evaluate waste characterization systems and processes applicable to waste streams containing debris waste at INEEL, as requested by DOE. In accordance with EPA’s WIPP Compliance Criteria at 40 CFR 194.8, EPA will conduct an inspection of waste characterization systems and processes at INEEL on April 24-27, 2000 to verify that the proposed systems and processes at INEEL can characterize transuranic debris waste properly, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

**DATES:** The EPA is requesting public comment on these documents. Comments must be received by EPA’s official Air Docket on or before May 15, 2000.

**ADDRESSES:** Comments should be submitted to: Docket No. A-98-49, Air Docket, Room M-1500 (LE-131), U.S.

Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

The DOE documents "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN-190), Revision 4 (March 2000)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN-182), Revision 4 (March 2000)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN-579), Revision 0 (March 2000)," are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A-98-49, Category II-A-2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10am-9pm, Friday-Saturday, 10am-6pm, and Sunday, 1pm-5pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9am-5pm.

Copies of items in the docket may be requested by writing to Docket A-98-49 at the address provided above, or by calling (202) 260-7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Scott Monroe, Office of Radiation and Indoor Air, (202) 564-9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1-800-331-WIPP, or visit our website at <http://www.epa.gov/radiation/wipp/announce.html>.

**SUPPLEMENTARY INFORMATION:** The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102-579), as amended (Pub. L. 104-201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive

waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than Los Alamos National Laboratory (LANL) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA appropriate documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and in informational dockets in the State of New Mexico, for public review and comment.

EPA inspected certain waste characterization processes at INEEL on July 28-30, 1998. DOE is proposing to apply those same processes that EPA inspected and approved (A-98-49 Items II-A-4-1 & 2) to new groups of waste streams. Specifically, the EPA approval (A-98-49 Items II-A-4-1 & 2) limits the applicability of the INEEL waste characterization processes and systems to graphite-bearing debris wastes. In the action described today, INEEL is seeking to have that approval expanded to include all debris wastes. EPA will conduct an inspection of INEEL to verify that these additional waste streams can be characterized in compliance with 40 CFR 194.24.

The INEEL documents submitted to EPA are: "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN-190), Revision 4 (March 2000)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN-182), Revision 4 (March 2000)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN-579), Revision 0 (March 2000)." The "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN-190), Revision 4 (March 2000)" and the "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN-182), Revision 4 (March 2000)" set forth the quality assurance program applied to TRU waste characterization at INEEL. The "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN-579), Revision 0 (March 2000)" sets forth the

waste characterization procedures for TRU wastes at INEEL. After EPA reviews these documents, EPA will conduct an inspection of INEEL to determine whether the requirements set forth in these documents are being adequately implemented in accordance with Condition 3 of the EPA's WIPP certification decision (appendix A to 40 CFR part 194). In accordance with § 194.8 of the WIPP compliance criteria, EPA is providing the public 30 days to comment on the documents placed in EPA's docket relevant to the site approval process. Because the inspection will occur during the comment period, EPA will respond to relevant comments received prior to, during, and after the inspection.

If EPA determines that the provisions in the documents are adequately implemented, EPA will notify the DOE by letter and place the letter in the official Air Docket in Washington, DC, and in the informational docket locations in New Mexico. A positive approval letter will allow DOE to ship additional TRU waste from INEEL. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and the EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R-89-01, A-92-56, and A-93-02, respectively, and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: April 10, 2000.

**Robert Perciasepe,**  
*Assistant Administrator for Air and Radiation.*

[FR Doc. 00-9378 Filed 4-13-00; 8:45 am]

**BILLING CODE 6560-50-P**

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 401

[USCG-1999-6098]

RIN 2115-AF91

#### Great Lakes Pilotage Rates

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to update the rates that pilots receive for their services on the Great Lakes. We are required by regulations to review these rates annually. Based on our review, we propose to minimally change the rates for the 2000 season to prevent a large rate change in future years.

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 15, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-1999-6098), 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 rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, call LCDR Don Darcy, Project Manager, Office of Standards Evaluation and Development Division, Commandant (G-MSR-1), U.S. Coast Guard, at 202-267-1200, by facsimile 202-267-4547, or by email at [ddarcy@comdt.uscg.mil](mailto:ddarcy@comdt.uscg.mil). For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of

Transportation, telephone 202-366-9329.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG-1999-6098), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

*(a) Regulatory History*

On May 9, 1996, the Department of Transportation published a final rule in the **Federal Register** (61 FR 21081). The rule explained the methodology used to set the rates for pilots working in the Great Lakes.

On December 14, 1998, the Coast Guard published a notice of annual review findings in the **Federal Register** (63 FR 68697). The Notice announced the results of the 1998 Rate Review and requested comments.

*(b) Purpose of This Rulemaking*

The Coast Guard is required by 46 CFR 404.1 (b) to conduct an annual

review of rates for pilots working in the Great Lakes. We reviewed these rates by using the methodology found in 46 CFR, part 404, Appendix A, Step 2.A. As explained in Step 2.A, the compensation target for pilots providing service on designated waters of the Great Lakes is equal to the approximate average annual compensation for masters on U.S. Great Lakes vessels. To calculate the compensation target for pilots, multiply the average annual compensation earned by first mates on U.S. Great Lakes vessels times 150%. The target compensation for pilots providing service on undesignated waters of the Great Lakes is equal to the approximate average annual compensation for first mates on U.S. Great Lakes vessels. We reviewed these pilotage rates and determined that they should be adjusted to meet pilot target compensation. Therefore, in accordance with 46 U.S.C. 9303(f), and based on the 1999 rate review, we are proposing to update the pilotage rates to meet these targets. We would like your comments on these updated rates.

*What Is the Coast Guard Proposing in This Rulemaking?*

We propose to change the rates for pilots in 46 CFR 401.405, 401.407, and 401.410 as follows:

If you are a pilot working in . . .	Your rate will . . .
Area 1 .....	increase 3%
Area 2 .....	decrease 4%
Area 4 .....	decrease 2%
Area 5 .....	decrease 6%
Area 6 .....	no change
Area 7 .....	increase 9%
Area 8 .....	decrease 5%

We also propose to decrease the rates in 46 CFR 401.420 and 401.428 by 1% because the average change in rates for all districts is 1%.

The yearly rate update is designed to minimize fluctuations in pilot compensation and avoid large changes in pilotage rates.

This rulemaking follows the methodology detailed in 46 CFR Part 404, including the step-by-step ratemaking calculations contained in Appendix A to Part 404. We summarized these calculations in the following tables and explained them in more detail afterwards.

TABLE A.—DISTRICT 1

Methodology	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Step 1, Projection of operating expenses .....	\$287,152	\$244,612	\$531,764
Step 2, Projection of target pilot compensation .....	\$1,088,262	\$414,576	\$1,502,838
Step 3, Projection of revenue .....	\$1,333,991	\$687,207	\$2,021,198
Step 4, Calculation of investment base .....	\$0	\$0	\$0
Step 5, Determination of target return on investment .....	6.69%	6.69%	6.69%
Step 6, Adjustment determination .....	\$1,359,198	\$645,374	\$2,004,572
Step 7, Adjustment of pilotage rates .....	1.03	.96	1.01

TABLE B.—DISTRICT 2

Methodology	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron Michigan	Total District 2
Step 1, Projection of operating expenses .....	\$609,164	\$518,917	\$1,128,081
Step 2, Projection of target pilot compensation .....	\$518,220	\$1,243,728	\$1,761,948
Step 3, Projection of revenue .....	\$1,156,057	\$1,886,198	\$3,042,255
Step 4, Calculation of investment base .....	\$45,397	\$71,006	\$116,403
Step 5, Determination of target return on investment .....	6.69%	6.69%	6.69%
Step 6, Adjustment determination .....	\$1,134,321	\$1,773,496	\$2,907,817
Step 7, Adjustment of pilotage rates .....	.98	.94	.96

TABLE C.—DISTRICT 3

Methodology	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Step 1, Projection of operating expenses .....	\$648,500	\$128,476	\$446,608	\$1,223,584
Step 2, Projection of target pilot compensation .....	\$1,140,084	\$621,864	\$829,152	\$2,591,100
Step 3, Projection of revenue .....	\$1,797,967	\$688,583	\$1,338,912	\$3,825,462
Step 4, Calculation of investment base .....	\$11,997	\$4,595	\$8,934	\$25,526
Step 5, Determination of target return on investment .....	6.69%	6.69%	6.69%	6.69%
Step 6, Adjustment determination .....	\$1,789,386	\$750,648	\$1,276,358	\$3,816,392
Step 7, Adjustment of pilotage rate .....	1.00	1.09	.95	.99

Here is a detailed explanation of our step-by-step calculations.

*Step 1.A: Submission of Financial Information*

Our first step is to gather financial data from each of the three Great Lakes pilot associations (the Associations). Each of the Associations must obtain an audit by an independent Certified Public Accountant (CPA) and submit these audits to the Director of the Great Lakes Pilotage (the Director), in accordance with 46 CFR 403.300.

*Step 1.B: Determination of Recognizable Expenses*

Each year, the Director determines which Association expenses will be recognized for ratemaking purposes. The Director may hire an independent CPA firm to review the expenses reported by the Association using the guidelines contained in 46 CFR 404.05. However, for 1999 this was not possible

due to the transfer of the Office of the Director, Great Lakes Pilotage from the St. Lawrence Seaway Development Corporation to the United States Coast Guard, and the fact that the position of Economist on the Director's staff was vacant for the last half of 1998. To determine the reasonable and necessary expenses for the purpose of the 1999 Rate Review, we used the Director's 1997 independent audit of the Associations. In the following paragraphs, we discuss some of the details of the audit and afterward, we have provided you with a table containing the expenses that the Director recognized and approved.

We calculate target pilot compensation each year based on the previous year's compensation earned by first mates on U.S. Great Lakes vessels. That figure is added to the total expenses to determine the revenue needed for ratemaking purposes. District 2 reported pilot compensation of

\$246,649 as training expenses and District 3 reported applicant pilot salaries and benefits of \$274,509 as an expense. Because the figures represent pilot compensation, they cannot be considered expenses for ratemaking purposes. The Director subtracted these expenses from the expense bases of Districts 1 and 2.

To support safety and ongoing learning, each Pilot's Association agreed to develop a Continuing Education Plan for registered pilots to keep them aware of safety issues and refresh their skills. Each Association submitted a plan that the Director approved, with minor modifications. The Director will continue to monitor these plans to ensure they have been implemented, are effective and are applied to each District's continuing education account. The Director reserves the right to modify each plan as necessary.

In order to encourage safety and compensate each District for its training

expenses, the Director has added the following figures to the expense bases of each District:

- District 1: \$30,000.
- District 2: \$40,000.

District 3: \$50,000.

These figures include \$2000 for each District for their "Train the Trainer" courses which prepare pilots to more

effectively contribute to the training process.

The following table displays the results of the audits and the Director's adjustments.

RECOGNIZABLE EXPENSES

	District 1	District 2	District 3
Total reported expenses .....	\$343,699	\$1,522,063	\$1,191,109
Proposed adjustments (independent CPA firm) .....	70,939	(225,569)	151,619
Director's adjustments .....	(32,894)	(246,649)	(274,509)
	45,000	(45,602)	(56,203)
	30,000	(21,151)	40,000
	40,000		50,000
<b>Total recognized expenses .....</b>	<b>\$456,744</b>	<b>\$1,023,092</b>	<b>\$1,062,016</b>

In June 1999, we forwarded the Director's 1997 independent CPA firm audit report to the Associations for comment. The following is a summary of the CPA firm's major findings and proposed adjustments, along with the Director's corresponding adjustments.

*Summary of Major Findings and Proposed Adjustments*

We divided the adjustments we made to the reported expenses into five categories: (1) Equalization Between districts, (2) reimbursed expenses, (3) expenses not necessary for pilotage services, (4) expenses related to lobbying, and (5) expenses not conforming to IRS guidelines.

(1) Equalization between Associations

The Coast Guard must ensure that each association's expenses are analyzed fairly and consistently with the other associations because each one is organized differently. The District 1 and 3 Associations are organized as partnerships whereas the District 2 Association is organized as a corporation. Because of this difference, the District 2 Association pays for Social Security taxes, Medicare taxes, insurance and travel expenses out of corporate funds while in the District 1 and 3 Associations these expenses are paid directly by the pilots themselves. Since these taxes, insurance and travel expenses are legitimate business expenses that should be recognized for ratemaking purposes, funds for these expenses have been added to the expense base of Districts 1 and 3.

District 2 spends a great deal more than the other Districts on many categories of expenses. For instance, pilot boat expenses in District 2 average \$176 per trip, while expenses in the other two Districts average approximately \$97 per trip. Erie Leasing, a wholly owned subsidiary of District 2 pilot's association that leases

equipment back to District 2, reported a net income from operations of \$70,506 in 1997, while District 3 has no affiliated company and the District 1 affiliated company showed a net income of \$4520 for 1997.

In the 1998 rate review, the Director stated that 1998 was the last year in which District 2 would be allowed to incur unreasonably high expenses. To bring pilot boat charges in line with Districts 1 and 3, the Director is reducing District 2's expense base by an additional \$45,602. This deduction is intended to offset Erie Leasing's net income of \$70,506 from operations. This, in effect, reduces Erie Leasing's net income to \$24,904, which represents a 6.69% return on Erie Leasing's property and equipment of \$372,270.

(2) Reimbursed Expenses

The independent CPA firm found that multiple parties reimburse some expenses for each association and recommended that these expenses should not be included in the expense base for each district. Examples of these expenses include reimbursement from one pilot association to another for shared pilot boats and dispatch, reimbursement from ships for tugboat use, and reimbursement from Canadian pilotage operations for shared administrative expenses. Although these are legitimate business expenses, they are paid by other districts or parties, not by basic pilotage rates, and should not be included in the calculation of pilotage rates for the district being reimbursed. The Director agrees with the independent CPA firm's recommendation to deduct reimbursed expenses from the expense bases of District's 2 and 3. These expenses include those for Canadian pilotage operations and shared administrative expenses.

(3) Expenses Not Necessary for Pilotage Services

Expenses that are not necessary for the provision of pilotage services are disallowed for ratemaking purposes. This is explained in 46 CFR 404.5 (a)(1), which contains some of the Great Lakes Pilotage Ratemaking regulations. This section states: "Each expense included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service" and "expense items that the Director determines are not reasonable and necessary for the provision of pilotage service will not be recognized for ratemaking purposes." The independent CPA firm determined that the largest portion of expenses that fits in this category came from the legal challenge by two Associations. They challenged the transfer of Great Lakes Pilotage oversight functions from the Commandant of the Coast Guard to the Administrator of the Saint Lawrence Seaway Development Corporation (SLSDC). This transfer did not affect the substantive rules regarding pilotage services. These litigation costs are distinguishable from expenses that are directly related to the provision of those services, such as the cost of transportation to and from vessels or the pilot's labor, from which the rate-paying public derives a direct benefit. The latter are costs that affect service to the public, while the former are not. We allowed some legal expenses directly related to the provision of pilotage service, such as the expense of defending a law suit by an applicant pilot discharged from the training program for cause, which directly affects the quality of service provided to the public. While it is reasonable to expect the public to share the burden of the direct costs of services provided, it is not reasonable to pass on the costs of litigation over an issue that has no

discernable effect on the actual provision of pilotage services. Therefore, we are disallowing these legal costs for the purposes of this ratemaking (\$19,900 in District 1, \$36,869 in District 3).

Furthermore, the Director believes that a major portion of the remaining legal costs, even after disallowance for the above, are still excessive. In 1997, District 1 reported \$34,138 in legal expenses, District 2: \$21,151, and District 3: \$56,203. The Director intends to recognize only those legal expenses that are reasonable, necessary and directly related to the provision of pilotage services (*i.e.*, they directly result from a legal action). In 1997, District 1 incurred \$34,138 in legal expenses; \$1,244 of which was directly related to litigation. Therefore, in the absence of any documentation to justify these legal expenses, the Director, for ratemaking purposes, is disallowing \$32,894 in legal expenses for District 1. Furthermore, because there were no legal expenses related to litigation in Districts 2 and 3, the Director is disallowing \$21,151 for District 2 and \$56,203 for District 3.

In addition to the costs associated with legal expenses, the independent CPA firm also recommended additional deductions from District 2's expenses in the amount of \$4800 for overpayment of rent, \$947 for business promotion, \$400 in donations, and \$1,988 for uniforms. None of these charges are necessary for the provision of pilotage services. The Director agrees with the independent

CPA firm's findings and these expenses have been deducted from the rate base.

(4) Expenses Related to Lobbying

The independent CPA firm recommended that we deduct \$1,392 from District 1, \$3,428 from District 2, and \$12,495 from District 3 for lobbying expenses including dues, legal charges, employee payrolls, and travel.

(5) Expenses Not Conforming to IRS Guidelines

The independent CPA firm recommended that we deduct \$2,484 from District 2's expense base for overpayment of a subsistence allowance that does not conform to IRS guidelines. The Director agrees with these findings and we deducted these expenses from the rate base.

During the 1999 navigational season, the Director initiated a change to District 1's Working Rules, in order to reduce pilot fatigue. This change increased the pilot's minimum time between assignments from eleven hours to thirteen hours and approved the use of a car service between home and pilot change points. During 1999, the cost of the car service was applied as a surcharge on the pilot's uniform source form. To incorporate this expense in District 1's expense base, the Director has approved an additional \$45,000.

Step 1.C: Adjustment for Inflation or Deflation

To adjust expenses for inflation, we increased the total recognized expenses for each association by 2.1%. The 2.1% inflation figure is based on the change

in the Consumer Price Index (CPI) from January 1998 to April 1999.

Step 1.D: Projection of Operating Expenses

Once all adjustments are made to the recognized operating expenses, the Director projects these expenses for each pilotage area. The Director considers foreseeable circumstances that could affect the accuracy of the projection and, as best as possible, determines the "projection of operating expenses."

For this rulemaking, we adjusted association expenses by multiplying the pilotage hour projection for each district (described in step 2.B., below) by the aggregate percentage of Association expenses that change in relation to a change in pilotage hours. Analysis indicates about 57% of Association expenses are affected by a change in pilotage hours. For instance, in District 1, pilotage hours are projected to decrease 5% (see step 2.B. below) which is multiplied by 57% to project that District 1's operating expenses should decrease 2.8% in response to the projected decrease in pilotage hours. Then, District-wide expenses were apportioned to each area according to the number of pilots in that area, as determined in step 2.B., below. For instance, District 1 is calculated to need seven pilots in Area 1 and four pilots in Area 2, therefore, Area 1 was assigned 64% of the expenses for the District and Area 2 was assigned 36% of the expenses for the District. The results of Step 1 for each district are displayed below.

DISTRICT 1

Methodology	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Projection of operating expenses .....	\$287,152	\$244,612	\$531,764

DISTRICT 2

Methodology	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron MI	Total District 2
Projection of operating expenses .....	\$609,164	\$518,917	1,128,081

DISTRICT 3

Methodology	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Projection of operating expenses .....	\$648,500	\$128,476	\$446,608	\$1,223,584

*Step 2.A: Determination of Target Rate of Compensation*

For pilots providing service in undesignated waters, the target rate of compensation is equal to the average yearly compensation earned by first mates on U.S. Great Lakes vessels. Effective August 1, 1999, the rate is \$103,644, according to information from the American Maritime Officers Union and Great Lakes Ship Operating Companies. This rate covers wages and compensation which include work days, vacation pay, weekend pay, holiday pay, bonuses, clerical pay, medical benefits and pension contributions.

For pilots providing services in designated waters the target rate of compensation is 1.5 times the yearly rate of first mate compensation, which is calculated at \$155,466. These figures represent a 12% increase in pilot's target compensation since pilotage rates were last set in 1997.

*Step 2.B: Determination of Number of Pilots Needed*

The number of pilots needed is determined by dividing the projected bridge hours for each area by the work hour targets for each area *i.e.*, 1000 hours in designated waters and 1800 hours in undesignated waters. Pilot bridge hours are projected based on the vessel traffic that these pilots are expected to serve. The Coast Guard used three sources to project vessel traffic and bridge hours. These sources included industry surveys, projections by the St. Lawrence Seaway Corporation and current bridge hour levels. The projection for 1999 is for a 5% reduction in Districts 1, 2, and 3. The following bullets list the projected equivalent pilot needs for 1999, by area:

- Area 1: 7 pilots.
- Area 2: 4 pilots.
- Area 4: 5 pilots.
- Area 5: 8 pilots.
- Area 6: 11 pilots.
- Area 7: 4 pilots.
- Area 8: 8 pilots.

(We use the term "equivalent" because the actual assignment of pilots to each area varies according to the needs of vessel traffic). Applying this methodology to the undesignated waters of District 3 results in a total of 19.2 pilots required for both Areas 6 and 8. Because District 3 utilizes contract pilots, a total of 19 pilots was utilized instead of 20 pilots to determine total pilot target compensation for the District. This certainly is not intended to penalize District 3 in any manner. Contract pilots enhance profitability while providing District 3 an added flexibility to comfortably handle sudden surges in traffic, while protecting pilot compensation targets in the event that projected traffic projections fall short of estimates.

*Step 2.C. Projection of Target Pilot Compensation*

Target pilot compensation is determined by multiplying the target compensation for each area by the number of pilots in each area. The results of Step 2 are summarized below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Projection of target pilot compensation .....	\$1,088,262	\$414,576	\$1,502,838

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron, MI	Total District 2
Projection of target pilot compensation .....	\$518,220	\$1,243,728	\$1,761,948

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Projection of target pilot compensation .....	\$1,140,084	\$621,864	\$829,152	\$2,591,100

*Step 3.A. Projection of Revenue*

We projected Pilotage Revenue by multiplying the revenue by each

Association in 1998 by the change in traffic projected for each Association. The result for each was divided among the pilotage areas based on the number

of pilots in each area. The results of Step 3 for each district are summarized below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Projection of revenue .....	\$1,333,991	\$687,207	\$2,021,198

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron, MI	Total District 2
Projection of revenue .....	\$1,156,057	\$1,886,198	\$3,042,255

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Projection of revenue .....	\$1,797,967	\$688,583 \$1,338,912	\$3,825,462	

*Step 4. Calculation of Investment Base*  
The independent CPA firm hired by the Director calculated the Investment

Base for each Association during the analysis. The results of those calculations are contained in the reports of the CPA firm, which have been

forwarded to each of the Districts for comment. The Step 4 Investment Base as calculated for each district is displayed below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Calculation of investment base .....	\$0	\$0	\$0

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron, MI	Total District 2
Calculation of investment base .....	\$45,397	\$71,006	\$116,403

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Calculation of investment base .....	\$11,997	\$4,595	\$8,934	\$25,526

*Step 5. Determination of Target Rate of Return*

The rate of return on investment (ROI) for 1999 was set at 6.69%. This is based

on the preceding year's average annual rate of return of new issues of high-grade corporate securities (Moody's AAA rating, average return). The Step 5

determination of target return on investment is displayed below.

DISTRICT 1

	Area 1 St. Lawrence River (percent)	Area 2 Lake Ontario (percent)	Total District 1 (percent)
Determination of target return on investment .....	6.69	6.69	6.69

DISTRICT 2

	Area 4 Lake Erie (percent)	Area 5 South East Shoal to Port Huron, MI (percent)	Total District 2 (percent)
Determination of target return on investment .....	6.69	6.69	6.69

DISTRICT 3

	Area 6 Lakes Huron and Michigan (percent)	Area 7 St. Mary's River (percent)	Total District 3 (percent)
Determination of target return on investment .....	6.69	6.69	6.69

Step 6. Adjustment Determination

We made the adjustment determination using the numbers listed above and following the formula found in Step 6 of Appendix A to 46 CFR Part 404. The Step 6 results for each district are displayed below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1 (percent)
Adjustment determination .....	\$1,375,414	\$659,187	\$2,034,602

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron MI	Total District 2
Adjustment determination .....	\$1,134,321	\$1,773,496	\$2,907,81

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's, River	Area 8 Lake Superior	Total District 3
Adjustment determination .....	\$1,789,386	\$750,648	\$1,276,358	\$3,816,392

Step 7. Adjustment of Pilotage Rates

To determine the adjustments to pilotage rates in each area we multiplied the current pilotage rates in those areas by the rate multiplier. The rate

multiplier is calculated by dividing the revenue needed (from step 6) by the revenue needed (from step 3) for each area. The Coast Guard proposes to amend the pilotage rates in 46-404.05-410 with the rates obtained by

multiplying the current pilotage rates times the rate multiplier calculated for each pilotage area. The Step 7 Adjustments of Pilotage Rates for each district are displayed below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Adjustment of pilotage rates .....	1.03	.96	1.01

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron MI.	Total District 2
Adjustment of pilotage rates .....	.98	.94	.96

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Adjustment of pilotage rate .....	1.00	1.09	.95	.99

*Regulatory Evaluation*

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed rule would make minimal adjustments to the pilotage rates for the Great Lakes 2000 shipping season. The Coast Guard used the ratemaking methodology found in 46 CFR part 404, Appendix A to identify adjustments necessary to achieve target pilot compensation by establishing these new rates for pilotage. This ratemaking methodology is designed to annually review pilotage rates in order to avoid fluctuations in pilot compensation thus avoiding large changes in pilotage rates. This notice of proposed rulemaking provides a step-by-step economic guide to show how the pilotage rates would be changed. The results of this rulemaking are in keeping with the Coast Guard's desire for a fair and efficient pilotage system.

*Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

For the Great Lakes region, small entities potentially impacted by this proposed rulemaking include shippers, Great Lakes ports, carriers, and shipping agents. The proposed decreases in Great Lakes pilotage rates are not expected to significantly impact small businesses because this rulemaking actually reduces the financial burden on small entities and on the general public.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

*Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Tom Lawler, Chief Economist, Great Lakes Pilotage (G-MW-1), U.S. Coast Guard, at 202-267-6447, by facsimile 202-267-4700, or by email at tlawler@comdt.uscg.mil.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

*Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*Federalism*

The Coast Guard has analyzed this proposal under the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*Taking of Private Property*

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

*Protection of Children*

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

*Environment*

We considered the environmental impact of this proposed rule and concluded that under figure 2-1, paragraph 34(a), of the Commandants Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The proposed rule is procedural in nature because it deals exclusively with adjusting pilotage rates for the Great Lakes. A "Categorical Exclusion Determination" is available in the

docket where indicated under

**ADDRESSES.**

**List of Subjects in 46 CFR Part 401**

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

**PART 401—GREAT LAKES PILOTAGE REGULATIONS**

1. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm), 46 CFR 401.105 also issued the authority of 44 U.S.C. 3507.

2. In § 401.405, revise tables (a) and (b) to read as follows:

**§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.**

\* \* \* \* \*

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage .....	\$8 Kilometer or \$13 per mile. <sup>1</sup>
Each Lock Transited .....	\$176 <sup>1</sup>
Harbor Movage .....	\$579 <sup>1</sup>

<sup>1</sup> The minimum basic rate for assignment of a pilot in the St. Lawrence River is \$381 and the maximum basic rate for a through trip is \$1,676.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six Hour Period .....	\$282
Docking/Undocking .....	269

3. In § 401.407, revise tables (a) and (b) to read as follows:

**§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.**

\* \* \* \* \*

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six Hour Period .....	\$316	\$316
Docking/Undocking .....	243	243
Any Point on the Niagara River below the Black Rock Lock .....	N/A	620

(b) Area 5 (Designated Waters):

Any point on/in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit pilot boat	St. Clair River
Toledo or any port on Lake Erie west of South-East Shoal	\$929	\$548	\$1,205	\$929	N/A
Port Huron Change Point .....	<sup>1</sup> 1,617	<sup>1</sup> 1,873	1,215	945	\$672
St. Clair River .....	<sup>1</sup> 1,617	N/A	1,215	1,215	548
Detroit or Windsor or the Detroit River .....	929	1,205	548	N/A	1,215
Detroit Pilot Boat .....	672	929	N/A	N/A	1,215

<sup>1</sup> When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise tables (b) and (c) to read as follows:

*§ 401.410 Basic rates and charges on Lake Huron, Michigan and Superior and the St Mary's River.*

\* \* \* \* \*

(b) Area 7 (Designated Waters):

Area	Detour	Gros Cap	Any Harbor
Gros Cap .....	\$1,436	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario .....	1,436	541	N/A
Any point in Sault Ste. Marie, Ontario except the Algoma Steel Corporation Wharf .....	1,204	541	N/A
Sault Ste. Marie, Michigan .....	1,204	541	N/A
Harbor Movage .....	N/A	N/A	541

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six Hour Period .....	\$248
Docking/Undocking .....	237

**§ 401.420 [Amended]**

5. In § 401.420—  
 a. In paragraph (a), remove the number “\$51” and add, in its place, the number “\$50”; and remove the number “\$807” and add, in its place, the number “\$799”.  
 b. In paragraph (b), remove the number “\$51” and add, in its place, the number “\$50”; and remove the number “\$807” and add, in its place, the number “\$799”.  
 c. In paragraph (c) (1), remove the number “\$305” and add, in its place, the number “\$302”; in paragraph (c) (3), remove the number “\$51” and add, in its place, the number “\$50” and also in paragraph (c) (3), remove the number “\$807”, and add, in its place, the number “\$799”.

**§ 401.428 [Amended]**

6. In § 401.428, remove the number “\$312” and add, in its place, the number “\$309”.

Dated: April 5, 2000.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00-9251 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants: 12-Month Finding for an Amended Petition To List the Westslope Cutthroat Trout as Threatened Throughout Its Range**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the Fish and Wildlife Service, announce a 12-month finding for an amended petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range pursuant to the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the westslope cutthroat trout is not warranted at this time.

**DATES:** The finding announced in this document was made on April 5, 2000.  
**ADDRESSES:** Data, information, comments, or questions regarding this notice should be sent to the Chief, Branch of Native Fishes Management, U.S. Fish and Wildlife Service, Montana Fish and Wildlife Management Assistance Office, 4052 Bridger Canyon Road, Bozeman, Montana 59715. The complete administrative file for this finding is available for inspection during normal business hours, by appointment, at the above address. The status review document for westslope cutthroat trout (U.S. Fish and Wildlife Service 1999) may also be obtained at that address, or at our Internet web site at <www.r6.fws.gov/cutthroat>.

**FOR FURTHER INFORMATION CONTACT:** Lynn R. Kaeding, at the above address, telephone (406) 582-0717, or e-mail Lynn\_Kaeding@fws.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. If the petition contains substantial information, the Act requires that we initiate a status review of the species and publish a 12-month finding indicating whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

On June 6, 1997, we received a formal petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies pursuant to the Act. The petitioners are American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Inc., Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited’s Madison-Gallatin Chapter, and Mr. Bud Lilly.

The westslope cutthroat trout (WCT) is 1 of 14 subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992). Cutthroat trouts owe their common name to the distinctive red slash that occurs just below both sides of the lower jaw. Adult

WCT, especially males during the spawning season, typically exhibit bright yellow, orange, and red colors. Characteristics of WCT that distinguish this fish from the other cutthroat subspecies include a pattern of irregularly shaped spots on the body that has few spots below the lateral line, except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct, evolutionary lineage (Behnke 1992).

The historic range of WCT is considered the most geographically widespread among the 14 subspecies of inland cutthroat trout (Behnke 1992). Although not known precisely, the historic distribution of WCT in streams and lakes can be summarized as follows: West of the Continental Divide, the subspecies is native to several major drainages of the Columbia River basin, including the upper Kootenai River drainage from its headwaters in British Columbia, through northwest Montana, and into northern Idaho; the Clark Fork River drainage of Montana and Idaho downstream to the falls on the Pend Oreille River near the Washington-British Columbia border; the Spokane River above Spokane Falls and into Idaho’s Coeur d’Alene and St. Joe River drainages; and the Salmon and Clearwater River drainages of Idaho’s Snake River basin. The historic distribution of WCT also includes disjunct areas draining the east slope of the Cascade Mountains in Washington (Methow River and Lake Chelan drainages), the John Day River drainage in northeastern Oregon, and the headwaters of the Kootenai River and several other small disjunct regions in British Columbia. East of the Continental Divide, the historic distribution of WCT includes the headwaters of the South Saskatchewan River drainage (United States and Canada); the entire Missouri River drainage upstream from Fort Benton, Montana, and extending into northwest Wyoming; and the headwaters of the Judith, Milk, and Marias Rivers, which join the Missouri River downstream from Fort Benton. Today, various WCT stocks remain in each of these major river basins in Montana, Idaho, Washington, Oregon, and Wyoming, but occur in scattered, disjunct populations in Canada.

On July 2, 1997, we notified the petitioners that our Final Listing Priority Guidance, published in the December 5, 1996, **Federal Register** (61 FR 64425), designated the processing of new listing petitions as being of lower priority than completion of emergency listings and processing of pending

proposed listings. A backlog of listing actions, as well as personnel and budget restrictions in Region 6 (Mountain-Prairie Region), which was assigned responsibility for the WCT petition, prevented our staff from working on a 90-day finding for the petition.

On January 25, 1998, the petitioners provided an amended petition to list the WCT as threatened throughout its range and designate critical habitat for the subspecies. The amended petition contained additional new information in support of the requested action. Because substantial new information was provided, we treated the amended petition as a new petition.

On June 10, 1998, we published a notice in the **Federal Register** (63 FR 31691) of a 90-day finding that the amended WCT petition provided substantial information indicating that the requested action may be warranted and immediately began a comprehensive status review of WCT (U.S. Fish and Wildlife Service 1999). In the notice, we asked for data, information, technical critiques, comments, or questions relevant to the amended petition. The comment period closed August 10, 1998; however, we reopened the comment period on August 17, 1998 (63 FR 43902), until October 13, 1998.

#### **Petitioners' Assertions**

The petitioners assert that remaining, genetically pure stocks of WCT occur almost exclusively in small, isolated streams in mountainous areas. In Montana, the region for which most data were provided, the petitioners indicate that stocks of genetically pure WCT occur in about 3.5 percent and 1.5 percent of their historic stream habitat in the Kootenai River and upper Missouri River drainages, respectively. The petition includes similar percentages for genetically pure WCT stocks in other drainages in Montana.

The petitioners assert that it is common for today's WCT stocks to have some degree of hybridization with introduced, nonnative trout. The petitioners further assert that stocks of WCT now occur in 11 percent of historic habitat in Idaho and 41 percent in Oregon, although data on genetic purity are not available for most of those stocks. The petitioners have little information on the status of native WCT stocks in Alberta, British Columbia, and Washington, although several stocks have been confirmed by recent studies. According to the petitioners, only about half of the few streams in Wyoming that were historic habitat for WCT now have stocks of this subspecies, but all of these stocks are considered hybridized to

some degree with introduced, nonnative trout.

The petitioners assert that the WCT should be listed as threatened because the subspecies' present distribution and abundance are substantially reduced from historic conditions; remaining stocks are small and widely separated and continue to decline in abundance; and the threats to the survival of WCT are pervasive and ongoing. The petitioners allege that threats to WCT include habitat destruction from logging and associated road building; adverse effects on habitat resulting from livestock grazing, mining, urban development, agricultural practices, and the operation of dams; historic and ongoing stocking of nonnative fish species that compete with or prey upon WCT or jeopardize the subspecies' genetic integrity through hybridization; and excessive harvest by anglers.

The petitioners further assert that programs to protect and restore WCT are inadequate or nonexistent, and that stocks of this fish continue to be threatened by a wide variety of ongoing and proposed activities.

#### **Status Review**

A review team consisting of U.S. Fish and Wildlife Service biologists from Region 1 (headquartered in Portland, Oregon) and Region 6 (headquartered in Denver, Colorado) conducted the WCT status review. Team members were: Scott A. Deeds, Fish and Wildlife Biologist, Upper Columbia River Basin Field Office, Spokane, Washington; Lynn R. Kaeding, Team Leader and Chief, Branch of Native Fishes Management, Montana Fish and Wildlife Management Assistance Office, Bozeman, Montana; Dr. Samuel C. Lohr, Fishery Biologist, Snake River Basin Office, Boise, Idaho; and Douglas A. Young, Fish and Wildlife Biologist, Central Oregon Field Office, Bend, Oregon.

In response to our June 10 and August 17, 1998, **Federal Register** notices, we received 56 comments from State game and fish departments, the U.S. Forest Service, National Park Service, Tribal governments, and private corporations, as well as private citizens, organizations, and other entities containing information on WCT (U.S. Fish and Wildlife Service 1999). State game and fish departments provided information on the status, distribution, abundance, and genetics of the WCT in their respective States. We also reviewed information on WCT obtained from scientific journal articles, agency reports and file documents, and telephone interviews and written correspondence with natural resources

managers familiar with WCT. In addition, we analyzed the extensive information on WCT provided by the Interior Columbia River Basin Ecosystem Management Project (1996). Detailed procedures and results of our comprehensive assessment of the available information are described in the WCT status review document (U.S. Fish and Wildlife Service 1999) and summarized in this notice.

Throughout the historic range of WCT, few of the remaining WCT stocks have been genetically classified on the basis of chromosome counts, biochemical characteristics, or molecular genetic information. Although application of such genetic techniques for characterizing fish stocks is becoming more common today, in most cases the taxonomic classification of extant WCT stocks has been based largely on the spotting patterns shown by the fish and the professional judgments and experiences of the fishery biologists who examined the fish in the field. Although WCT stocks with varying degrees of genetic purity are known to occur across the subspecies' range, there is currently little definitive information on the genetic characteristics of most WCT stocks (U.S. Fish and Wildlife Service 1999). Even in Montana, where an extensive database on the genetic characteristics of many WCT stocks exists, the precise genetic characteristics of most stocks are unknown. Consequently, we based the WCT status review on the professional judgments made by the State game and fish departments that the fish the departments classified as WCT actually represented the subspecies, even though the precise genetic characteristics of those stocks may not be known, or the stocks may consist of intercross progeny that were the product of some low or nondetectable level of interbreeding between WCT and another fish species. In addition, given the very small, disjunct populations in Canada, we evaluated WCT status on the basis of WCT stocks that currently occur within the historic range of the subspecies in the United States (*i.e.*, introduced and naturally occurring stocks in Canada and introduced stocks outside the historic range in the United States were not included in the evaluation).

#### **Status Review Findings**

The National Marine Fisheries Service and our agency have adopted criteria (61 FR 4722) for designation of Distinct Population Segments (DPSs) for vertebrate organisms, such as WCT, under the Act. To constitute a DPS, a stock or group of stocks must be: (1) Discrete (*i.e.*, spatially, ecologically, or

behaviorally separated from other stocks of the taxon); (2) significant (e.g., ecologically unique for the taxon, extirpation would produce a significant gap in the taxon's range, the only surviving native stock of the taxon, or substantial genetic divergence occurs between the stock and other stocks of the taxon); and (3) the population segment's conservation status must meet the Act's standards for listing. We found no morphological, physiological, or ecological data for WCT that indicated unique adaptations of individual WCT stocks or assemblages of stocks anywhere within the historic range of the subspecies. Although the disjunct WCT stocks in Canada, Washington, and Oregon, for example, met the first criterion for DPS designation (discreteness), evidence in support of the second criterion (significance) appeared entirely speculative for those and other stocks across the range of the subspecies. Congress has made clear (61 FR 4722) that in the absence of compelling evidence of genetic, ecological, or other characteristics that indicate a unique significance of a stock or assemblage of stocks, DPSs should be used "sparingly" in the context of the Act. We found no compelling evidence in support of recognizing DPSs for WCT. Instead, a single WCT population was recognized for purposes of the status review (U.S. Fish and Wildlife Service 1999).

Information provided primarily by State game and fish departments in Montana, Idaho, Washington, and Oregon indicated WCT currently occur in about 4,275 tributaries or stream reaches that collectively encompass more than 23,000 linear miles (36,800 kilometers (km)) of stream habitat (U.S. Fish and Wildlife Service 1999). Those WCT stocks are distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins. In addition, WCT are known to occur naturally in 6 lakes in Idaho and Washington, totaling about 72,900 hectares (ha) (180,000 acres (ac)), and in at least 20 lakes in Glacier National Park, Montana, totaling 2,165 ha (5,347 ac). The distribution of WCT in any particular stream or stream reach was based on field sampling or the professional judgment of fisheries biologists familiar with that geographic region. Because sampling all stream reaches in a watershed is generally not feasible, especially in remote and mountainous regions, information concerning linear stream distances occupied by WCT that the departments supplied were often total lengths for an

entire stream in which WCT were known or suspected to occupy some portion. Although WCT stocks that occupied large, mainstem rivers and lakes and their principal tributaries are reduced from their historic levels, the degree that those stocks are reduced cannot be determined precisely because definitive historic data are limited. Nonetheless, we find that viable, self-sustaining WCT stocks remain widely distributed throughout the historic range of the subspecies, most notably in headwater areas.

In the context of the Act, the term "threatened species" means any species (or subspecies or, for vertebrates, DPS) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not indicate threshold levels of historic population size at which (as the population of a species declines) listing as either "threatened" or "endangered" becomes warranted. Instead, the principal considerations in the determination of whether or not a species warrants listing as a threatened or endangered species under the Act are the threats that currently confront the species and the likelihood that the species will persist in "the foreseeable future."

Evidence from the Missouri River basin indicates that a conspicuous decline in the WCT population occurred early in the twentieth century (U.S. Fish and Wildlife Service 1999). That decline was mainly attributed to rapid, abundant colonization of mainstem rivers and their major tributaries by one or more introduced, nonnative fish species (e.g., brook trout (*Salvelinus fontinalis*), brown trout (*Salmo trutta*), and rainbow trout (*Oncorhynchus mykiss*)) that had adverse effects on WCT. Our analysis also showed that the rate of decline in the WCT population is markedly lower today than it was early in the twentieth century. The evidence from the Missouri River basin provided a model for the historic decline of WCT that is probably applicable to WCT in other regions of the subspecies' range.

We also have evidence that many of the headwater streams inhabited by extant WCT stocks throughout the subspecies' range are relatively secure from colonization by the nonnative fishes that are known to adversely affect WCT. Throughout the inland, western United States today, stocks of various subspecies of indigenous cutthroat trout often persist in high-elevation, high-

velocity, headwater streams, where they appear to have a competitive advantage over nonnative fishes. Thus, the headwater streams inhabited by many extant WCT stocks may be relatively secure from colonization by nonnative fishes. In addition, because they occur in high-elevation areas, those headwater streams are relatively secure from the adverse effects of human activities.

Spatial separation of many extant WCT stocks precludes natural movement and interbreeding among some stocks, thereby potentially increasing the likelihood that those stocks will become extinct due to limited genetic variability. In addition, the probable small sizes of some WCT stocks and the short stream reaches that they might inhabit make those stocks more vulnerable to extirpation due to natural catastrophes such as floods, landslides, wild fires, and other stochastic environmental events. Remaining WCT stocks in the Lower Missouri River and part of the Columbia River (in Washington) drainages, for example, occupy stream reaches that average 2.9 and 3.4 miles (4.6 and 5.4 km) long, respectively (U.S. Fish and Wildlife Service 1999). Despite the probable small sizes of many extant WCT stocks that inhabit restricted, headwater stream reaches, however, we find no evidence of negative impacts of inbreeding within stocks. Similarly, although the probable small sizes of some of those WCT stocks and the short stream reaches that they inhabit make some stocks more vulnerable to extirpation due to stochastic environmental events, we find no evidence that the loss of WCT stocks that could result from such infrequent, natural catastrophes would threaten the continued existence of the subspecies as a whole (U.S. Fish and Wildlife Service 1999).

The status review revealed that most of the habitat for extant WCT stocks lies on lands administered by Federal agencies, particularly the U.S. Forest Service (U.S. Fish and Wildlife Service 1999). Moreover, most of the strongholds for WCT stocks occur within roadless or wilderness areas or national parks, all of which afford considerable protection to WCT. In addition, numerous existing Federal and State regulatory mechanisms, if properly administered and implemented, are working to protect WCT and their habitats throughout the range of the subspecies. For example, the States generally restrict the harvest of WCT, and in many regions only catch-and-release angling is allowed. However, some regions have regulatory mechanisms with primary goals that

could maintain habitat conditions at levels that are less than optimal for WCT.

We also are encouraged by ongoing State and local programs, most notably those in Montana, to protect and restore WCT within its historic range (U.S. Fish and Wildlife Service 1999). The U.S. Forest Service, State game and fish departments, and National Park Service reported more than 700 ongoing projects directed toward the protection and restoration of WCT and their habitats. In addition, on private lands in Montana's Columbia River basin, for example, Plum Creek Timber Company is working closely with us to develop a Native Fish Habitat Conservation Plan that includes provisions for the conservation of WCT on 1.5 million acres of Plum Creek property. Elsewhere in Montana, restoration activities under way as part of the Blackfoot Challenge, a cooperative endeavor between private landowners and public agencies to conserve and restore streams and riparian habitats in the Blackfoot River valley, include removal of fish-passage barriers, screening of irrigation diversions to prevent the loss of WCT to canals, and general improvement of instream fish habitat.

Finally, WCT also accrue some additional level of protection from the Act's section 7 consultation process in the numerous geographic areas where WCT distribution and habitat requirements overlap with the distributions of one or more fish species currently listed as threatened or endangered under the Act, specifically, bull trout (*Salvelinus confluentus*), steelhead (*Oncorhynchus mykiss*), and Pacific salmon species and their habitats on Federal lands in the Columbia River basin. Conservation efforts to protect these species, improve available habitat, and minimize adverse impacts on them would provide similar conservation benefits to WCT.

The Act identifies five factors of potential threats to a species: (1) The present or threatened destruction, modification, or curtailment of the species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting the species' continued existence. The overall WCT population has been reduced from historic levels, and extant stocks of this subspecies face threats from some of these factors in several areas of the historic range. However, we find that the magnitude and imminence of those threats are small. WCT have a

widespread distribution, and there are numerous robust populations throughout its range.

On the basis of the best available information, which is detailed and analyzed in the status review document (U.S. Fish and Wildlife Service 1999) and summarized in this notice, we conclude that the WCT is not likely to become a threatened or endangered species within the foreseeable future. Therefore, listing of the WCT as a threatened or endangered species under the Act is not warranted at this time.

#### References Cited

- Behnke, R.J. 1992. Native trout of western North America. American Fisheries Society Monograph 6.
- Interior Columbia River Basin Ecosystem Management Project. 1996. Key salmonid current-status database (CRBFISH6). Available at ICBEMP web site <www.icbemp.gov>.
- U.S. Fish and Wildlife Service. 1999. Status review for westslope cutthroat trout in the United States. Regions 1 and 6. Available at our web site <<www.r6.fws.gov/cutthroat>.

Authors: The primary author of this document is Lynn R. Kaeding (see ADDRESSES section).

#### Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: April 5, 2000.

**Jamie Rappaport Clark,**

Director, Fish and Wildlife Service.

[FR Doc. 00-9259 Filed 4-13-00; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AF45

#### Endangered and Threatened Wildlife and Plants; Notice of 6-Month Extension on the Proposed Rule To List the Southwestern Washington/ Columbia River Coastal Cutthroat Trout in Washington and Oregon as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of extension of deadline.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, extend for 6 months the time to make a final determination on the proposal to list the distinct vertebrate population segment of the coastal cutthroat trout (*Oncorhynchus*

*clarki clarki*) in the Southwestern Washington/Columbia River area as a threatened species. Under the Endangered Species Act (ESA) of 1973, as amended, the deadline for the final action on the proposed rule to list this population segment in Washington and Oregon is extended from April 5, 2000, to October 5, 2000. The 6-month extension is necessary for us to obtain and review new information needed to resolve substantial scientific disagreement about the status of this population.

**DATES:** Comments may be submitted until May 15, 2000.

**ADDRESSES:** The complete file for this notice is available for inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Ave., Suite 100, Portland, Oregon 97266.

**FOR FURTHER INFORMATION CONTACT:** Kemper McMaster, State Supervisor, at the above address (telephone 503/231-6179; facsimile 503/231-6195).

#### SUPPLEMENTARY INFORMATION:

#### Background

In January 1999, the National Marine Fisheries Service (NMFS) published a document titled "Status Review of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) from Washington, Oregon, and California" (Johnson *et al.* 1999). The status review document determined that there were six Evolutionarily Significant Units (ESUs) of coastal cutthroat trout along the coast of Washington, Oregon, and California. Subsequent to the completion of the status review, NMFS and the Fish and Wildlife Service (FWS) (jointly, the Services) published a proposed rule on April 5, 1999, (64 FR 16397) to list one of the six cutthroat trout ESUs as threatened under the Endangered Species Act (ESA). The proposed ESU consisted of coastal cutthroat trout populations in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls. This proposed rule was issued jointly due to a question regarding which agency (FWS or NMFS) had regulatory jurisdiction over coastal cutthroat trout. The proposal also proposed, based on newly available information, to delist the Umpqua River coastal cutthroat trout ESU previously listed by NMFS as endangered.

Since the joint proposal was published, agency jurisdiction has been determined to be with FWS. On November 22, 1999, the Services jointly signed a letter announcing FWS regulatory jurisdiction over Coastal

cutthroat trout (USDI & USDC 1999). This document clarified that NMFS would retain responsibility to reach a final determination, subject to our concurrence, on the proposal to delist the Umpqua population, and we would assume all other regulatory ESA responsibilities for coastal cutthroat trout (USDI & USDC 1999). A notice will soon be published in the **Federal Register** announcing this change in regulatory jurisdiction.

Under the timeframe established for listing decisions by the ESA (section 4(3)(b)(6)(A)), a final determination on the proposal to list the Southwestern Washington/Columbia River ESU of the coastal cutthroat trout in Washington and Oregon would normally be due by April 5, 2000. However, when substantial scientific disagreement occurs regarding the sufficiency or accuracy of the available data, as in this case, the Act allows for a 6-month extension of a final listing determination for the purpose of soliciting additional data (section 4(3)(b)(6)(B)(i)). The 6-month extension announced in this notice is based on this provision.

#### Substantial Scientific Disagreement

Two groups (hatchery populations and above-barrier populations of coastal cutthroat trout) were not fully examined in the NMFS status review. The proposed rule (64 FR 16397) stated:

In the proposed [Southwestern Washington/Columbia River] ESU, only naturally spawned cutthroat trout are proposed for listing. Prior to the final listing determination, we will examine the relationship between hatchery and naturally spawned populations of cutthroat trout, and populations of cutthroat trout above barriers to assess whether any of these populations warrant listing. This may result in the inclusion of specific hatchery populations or populations above barriers as part of the listed ESU in the final listing determination.

In the section on the framework for ESUs, the NMFS status review document (Johnson *et al.* 1999) discussed the issue of barriers to migration (p. 125). The NMFS Biological Review Team (BRT) questioned the role played by above-barrier populations in ESUs immediately downstream, and found this analysis to be a challenging problem. Evidence of the challenge includes the fact that "[t]he BRT was divided regarding whether populations above long-standing natural barriers (i.e., those that effectively preclude all migration for hundreds or thousands of years) should be included in ESUs." The BRT went on to discuss the reasons they might or might not choose to include populations above such barriers

in ESUs, but failed to reach any resolution or pass on recommendations. The BRT also addressed the question of whether populations above barriers that permit some one-way migration should be included in an ESU downstream. A majority of BRT members felt that such populations should be included in the downstream ESU because these populations may "contribute demographically and genetically to populations below them", and "may represent genetic resources shared by populations below these barriers (and potentially a significant component of diversity for an ESU)" (Johnson *et al.* 1999).

When the Services published the proposed rule, however, the question on whether to include above-barrier populations in downstream ESUs remained unresolved. Furthermore, the BRT unanimously decided that the guidance on including populations above one-way passable barriers into downstream ESUs should not be followed in the case of Willamette Falls, a barrier that allows some one-way (and possibly in rare instances, two-way) migration between the currently proposed Southwestern Washington/Lower Columbia River ESU and the upper Willamette ESU (for which the BRT made no status assessment). In fact, the BRT went so far as to conclude that the upper Willamette population deserved its own ESU status, based primarily on the fact that it "encompasses a large area with considerable habitat complexity and that it supports several different populations of coastal cutthroat trout (Johnson *et al.* 1999). However, it is possible that, with additional analysis, the area identified by NMFS as the Upper Willamette ESU is actually part of the Southwestern Washington/Lower Columbia River ESU. Another issue that needs to be addressed is how the BRT handled other populations either above impassable barriers, or above barriers allowing one-way passage, and if any of these populations warrant recognition as distinct vertebrate population segments.

In addition, we are aware of additional information provided to the BRT by the Washington Department of Fish and Wildlife (WDFW) that indicates that some coastal Washington populations currently included within the Southwestern Washington/Lower Columbia River ESU should not be included. Although this information was presented to the BRT during the status review, it was not made available to the FWS until after the decision regarding regulatory jurisdiction over coastal cutthroat trout was resolved. The

BRT has also recently alerted the FWS to a compilation of new genetic data that the BRT indicated "are relevant to the identification of distinct population segments in the Lower Columbia River and southwestern Washington coast" (Waples, *in litt.* 2000). Therefore, with further review, the WDFW information, information concerning the role of above-barrier and hatchery populations of cutthroat trout, and the new genetic data may lead us to modify the boundaries of the ESU proposed for listing. Such modification may result in the need to repropose the distinct vertebrate population segment for listing, if we determine that the status of the segment warrants protection under the ESA.

Therefore, in consideration of all the above issues, we are providing notice that, according to section 4(b)(6)(B)(i) of the ESA, the 1-year timeframe allowed to make a final determination on a listing proposal will be extended an additional 6 months. The 6-month extension will enable us to evaluate new information regarding the status of above-barrier and hatchery populations, and allow the integration of this information into the final listing decision. With this 6-month extension, a final decision regarding the proposal to list the Southwestern Washington/Columbia River ESU of the coastal cutthroat trout (64 FR 16397) is due by October 5, 2000.

#### Comments Solicited

In order to resolve the substantial scientific disagreement, we are requesting comments from interested parties on the following three topics:

- (1) The role of hatchery populations of coastal cutthroat trout within the Southwestern Washington/Columbia River ESU, and their importance to the conservation of this population;
- (2) The role of above-barrier populations, including the area identified as the Upper Willamette ESU, within the Southwestern Washington/Columbia River ESU and their importance to the conservation of this ESU; and
- (3) Genetic data or other information that may help resolve the identification of distinct population segments in the southwestern Washington coast, Lower Columbia River, and Upper Willamette River areas.

#### Literature Cited

- Johnson, O.W., M.H. Ruckelshaus, W.S. Grant, F.W. Waknitz, A.M. Garrett, G.J. Bryant, K. Neely, and J.J. Hard. 1999. Status review of coastal cutthroat trout from Washington, Oregon, and California. U.S. Dept. Commer., NOAA Tech Memo. NMFS-NWFSC-37, 292 p.

USDI & USDC 1999. Letter from USFWS Director Jamie Rappaport Clark and NMFS Director Penelope D. Dalton to Anne Badgley, Regional Director, Region 1 USFWS and Will Stelle, Regional Administrator, Northwest Region NMFS, regarding Regulatory Jurisdiction over the Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*). Dated November 22, 1999. 2 pages.

Waples, R.S. In Litt. Letter from Robin Waples of NMFS Northwest Fisheries Science Center to Anne Badgley, Regional Director, Region 1 USFWS regarding a request for assistance in completing Endangered Species Act status review for Coastal cutthroat trout. Dated February 22, 2000. 2 pages.

Author: The primary author of this document is Rollie White (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 6, 2000.

#### Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00-9258 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 21

RIN 1018-AF93

#### Migratory Bird Permits; Determination That the State of Delaware Meets Federal Falconry Standards and Amended List of States Meeting Federal Falconry Standards

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to add the State of Delaware to the list of States whose falconry laws meet or exceed Federal falconry standards. This action would enable residents of the State of Delaware to apply for a Federal/State falconry permit and to practice falconry in that State. We also propose to amend the list of States that participate in the cooperative Federal/State permit system by adding Delaware and Vermont. The State of Vermont has recently begun to participate in the cooperative program.

**DATES:** You may submit comments on or before May 15, 2000 at the location noted below under the heading **ADDRESSES**.

**ADDRESSES:** Comments must be submitted to the Chief, Office of Migratory Bird Management, U.S. Fish

and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203. Copies of the environmental assessment (EA) and the State falconry rules for Delaware are available by writing to this same address. The public may inspect comments during normal business hours at this address.

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone 703/358-1714.

#### SUPPLEMENTARY INFORMATION:

Regulations in 50 CFR part 21 provide for review and approval of State falconry laws by the Fish and Wildlife Service. A list of States whose falconry laws are approved by the Service is found in 50 CFR 21.29(k). The practice of falconry is authorized in those States. As provided in 50 CFR 21.29 (a) and (c), the Director has reviewed certified copies of the falconry regulations adopted by the State of Delaware and has determined that they meet or exceed Federal falconry standards. Federal falconry standards contained in 50 CFR 21.29(d) through (i) include permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. Delaware regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j), which include requirements on the number, species, acquisition, and marking of raptors. Therefore, we are proposing that the State of Delaware be listed under § 21.29(k) as a State that meets Federal falconry standards. Inclusion of Delaware in this list would eliminate the current restriction that prohibits falconry within that State.

We are publishing the entire list of States that have met the Federal falconry standards, including the State of Delaware. We believe that publishing this list in its entirety will eliminate any confusion concerning which States have approval for falconry and further indicate which States participate in a cooperative Federal/State permit system program. We are adding asterisks to both Delaware and Vermont to identify them as participants in the cooperative permit program as explained below.

#### Why Is This Rulemaking Needed?

The need for the proposed changes to 50 CFR 21.29(k) arose from the expressed desire of the State of Delaware to institute a falconry program for the benefit of citizens interested in the sport of falconry and to participate in a cooperative Federal/State permit system. Accordingly, the State has promulgated regulations that meet or

exceed Federal requirements protecting migratory birds. The proposed changes to 50 CFR 21.29(k) are necessary to allow, by inclusion within the listing of authorized falconry States, persons in the State of Delaware to practice falconry. We are also identifying the State of Vermont as a participant in a cooperative Federal/State permit system following that State's addition to the list of approved falconry States on September 7, 1999 (64 FR 48565).

#### NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500-1508), the Service prepared an Environmental Assessment (EA) in July 1988 to support establishment of simpler, less restrictive regulations governing the use of most raptors. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the proposed rule to amend 50 CFR 21.29(k) by adding Delaware to the list of States whose falconry laws meet or exceed Federal falconry standards, and Delaware and Vermont as participants in the cooperative application program, we have determined that the issuance of the proposed rule is categorically excluded from NEPA documentation under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10.

#### Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531, *et seq.*), provides that, "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] shall "insure that any action authorized, funded, or carried \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat \* \* \*". Our review pursuant to section 7 concluded that this action is not likely to adversely affect listed species. A copy of this determination is available by contacting us at the address indicated under the **ADDRESSES** caption.

#### Other Required Determinations

This rule was not subject to the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior has

determined that this rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act; it will not have an annual effect on the economy of \$100 million or more, will not cause a major increase in costs or prices, and will not adversely affect competition, employment, investment, productivity, or innovation. We estimate that 20 individuals would obtain falconry permits as a result of this rule, and many of the expenditures of those permittees would accrue to small businesses. The maximum number of birds allowed by a falconer is 3, so the maximum number of birds likely to be possessed is 60. Some birds would be taken from the wild, but others could be purchased. Using one of the more expensive birds, the northern goshawk, as an estimate, the cost to procure a single bird is less than \$5,000, which, with an upper limit of 60 birds, translates into \$300,000. Expenditures for building facilities would be less than \$32,000 for 60 birds, and for care and feeding less than \$60,000. These expenditures, totaling less than \$400,000, represent an upper limit of potential economic impact from the addition of Delaware to the list of approved States.

This rule has no potential takings implications for private property as defined in Executive Order 12630. The only effect of this proposed rule on the constituent community would be to allow falconers in the State of Delaware to apply for falconry permits. We estimate that no more than 20 people would apply for falconry permits in Delaware. This rule does contain information collection requirements that are approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection is covered by an existing OMB approval for licenses/permit applications, number 1018-0022. For further details concerning the information collection approval, see 50 CFR 21.4.

We have determined, and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The rule does not have significant Federalism effects pursuant to Executive Order 13132. We also have determined that these regulations meet the applicable standards provided in

sections 3(a) and 3(b)(2) of Executive Order 12988 for civil justice reform, and that the rule does not unduly burden the judicial system.

Regarding Government-to-Government relationships with Tribes, this rulemaking would have no effect on federally recognized Tribes. There are no federally recognized Tribes in the State of Delaware. Furthermore, the revisions to the existing regulations are of a purely administrative nature affecting no Tribal trust resources.

#### Request for Comments

If you wish to comment, you may do so by any one of several methods. You may mail or hand-deliver comments to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203. You may also fax comments to this office at (703) 358-2016.

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

#### List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons described in the preamble, we are proposing to amend part 21, subchapter B, chapter I of title 50 of the Code of Federal Regulations, as set forth below:

#### PART 21—MIGRATORY BIRD PERMITS

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

**Authority:** Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.29 by revising paragraph (k) as follows:

#### § 21.29 Federal falconry standards.

\* \* \* \* \*

(k) *States meeting Federal falconry standards.* We have determined that the following States meet or exceed the minimum Federal falconry standards established in this section for regulating the taking, possession, and transportation of raptors for the purpose of falconry. The States that are participants in a cooperative Federal/State permit system are designated by an asterisk (\*).

\*Alabama  
 \*Alaska  
 \*Arizona  
 \*Arkansas  
 \*California  
 \*Colorado  
 \*Delaware  
 \*Florida  
 \*Georgia  
 \*Idaho  
 \*Illinois  
 \*Indiana  
 \*Iowa  
 \*Kansas  
 \*Kentucky  
 \*Louisiana  
 Maine  
 Maryland  
 Massachusetts  
 \*Michigan  
 \*Minnesota  
 \*Mississippi  
 \*Missouri  
 \*Montana  
 \*Nebraska  
 \*Nevada  
 \*New Hampshire  
 \*New Jersey  
 New Mexico  
 New York  
 \*North Carolina  
 \*North Dakota  
 \*Ohio  
 Oklahoma  
 \*Oregon  
 Pennsylvania  
 Rhode Island  
 \*South Carolina  
 \*South Dakota  
 \*Tennessee  
 Texas  
 \*Utah  
 \*Vermont  
 \*Virginia  
 \*Washington  
 West Virginia  
 \*Wisconsin  
 \*Wyoming

Dated: April 7, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00-9280 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-55-P**

# Notices

Federal Register

Vol. 65, No. 73

Friday, April 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 10, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

### Grain Inspection, Packers and Stockyard Administration

*Title:* Survey of Customers of the Official Grain Inspection and Weighing System.

*OMB Control Number:* 0580-NEW.

*Summary of Collection:* The United States Grain Standards Act, as amended (7 U.S.C. 71-87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) (AMA), authorize the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMS, Grain Inspection, Packers and Stockyard Administration (GIPSA's) FGIS offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee, to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high-quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. FGIS will collect information using a survey.

*Need and Use of the Information:* FGIS will collect information to determine where and to what extent services are satisfactory, and where and to what extent they can be improved. The information will be shared with other managers and program leaders who will be responsible for making any necessary improvements at the office/agency, program, and project level.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 1,874.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 313.

### Rural Business-Cooperative Service

*Title:* Invitation for Applications of Interest to Sell Intermediary Relending Program (IRP) Loans Under and Expanded Pilot.

*OMB Control Number:* 0570-0036.

*Summary of Collection:* The Rural Business-Cooperative Service (RBS) will

competitively select and authorize several intermediaries to sell an aggregate amount of approximately \$50 million of the existing IRP portfolios in Fiscal Year (FY) 2000 based on selected criteria. In order to evaluate the IRP applications from the intermediary and to competitively select intermediaries to participate in the sale, certain criteria must be established. This information is necessary to provide the threshold to select those intermediaries to participate in the expanded sale. Each intermediary will be asked to address the criteria in the application submitted.

*Need and Use of the Information:* RBS will collect the names, addresses, contact person, telephone, fax numbers, and e-mail address. The purpose of the information is to evaluate all applications received to determine eligibility of the intermediary to participate in the secondary market sale based on the criteria set forth. RBS will evaluate each intermediary application based on the published criteria.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 1,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 4,308.

### Agricultural Marketing Service

*Title:* Specified Commodities Imported into the United States Exempt from Import Requirements, 7 CFR Part 944, 980, and 999.

*OMB Control Number:* 0581-0167.

*Summary of Collection:* Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601-674) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect. No person may import products for processing or other exempt purposes unless the shipment is accompanied by an executed Importers Exempt Commodity Form (FV-6). The Agricultural Marketing Service (AMS) will collect information using forms FV-6 and FV-7.

*Need and Use of the Information:* AMS will collect information on the

following: the product and the variety being imported; the date and place of inspection; identifying marks or numbers on the containers; identifying numbers on the railroad car; truck, or other transportation vehicle transporting product to the receiver; the name, mailing address, phone number, and fax number of the importer; the place and date entry; the quantity imported; the name, mailing address, phone number, and fax number of the intended receiver; intended use of the exempt commodity; and the U.S. Customs Service entry number and harmonized tariff code number.

*Description of Respondents:* Not-for-profit institutions.

*Number of Respondents:* 1,920.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 1,632.

#### Rural Utilities Service

*Title:* 7 CFR 1775, Technical Assistance Program.

*OMB Control Number:* 0572-0112.

*Summary of Collection:* Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, authorizes Rural Utilities Service (RUS) to make loans and grants to public agencies, American Indian tribes, and nonprofit corporations. The loans and grants fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Nonprofit organizations receive Technical Assistance and Training (TAT) and Solid Waste Management (SWM) grants to help small rural communities or areas identify and solve problems relating to community drinking water, wastewater, or solid waste disposal systems. The technical assistance is intended to improve the management and operation of the systems and reduce or eliminate pollution of water resources.

*Need and Use of the Information:* RUS will collect information to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. RUS will review the information, evaluate it, and, if the applicant and project are eligible for further competition, invite the applicant to submit a formal application. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the TAT and SWM program.

*Description of Respondents:* Not-for-profit institutions.

*Number of Respondents:* 80.

*Frequency of Responses:* Reporting: On occasion; Quarterly;

*Total Burden Hours:* 4,168.

#### Rural Utilities Service

*Title:* 7 CFR 1744-C, Advance and Disbursement of Funds—Telecommunications.

*OMB Control Number:* 0572-0023.

*Summary of Collection:* Section 201 of the Rural Electrification Act (RE Act) of 1936 authorizes the Administrator of the Rural Utilities Service (RUS) to make loans for the purpose of providing telephone service to the widest practicable number of rural subscribers. RUS Form 481, "Financial Requirement Statement," must be submitted by the borrower to request loan advances. RUS Form 81 is prepared and submitted to RUS by a borrower in order to have approved loan funds advanced.

*Need and Use of the Information:* RUS will collect information about the description of the advance desired; backup documentation relating to transactions listed on the Form 481; and verification that the funds advanced are related directly to loan purposes. If the information were not collected RUS would not have any control over how loan funds are spent or a record of the balance to be advanced.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 645.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 2,893.

#### Rural Utilities Service

*Title:* 7 CFR Part 1703-H, Deferments of RUS Loan Payments for Rural Development Projects.

*OMB Control Number:* 0572-0097.

*Summary of Collection:* Subsection (b) of section 12 of the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912), a Rural Utilities Service (RUS) electric or telephone borrower may defer the payment of principal and interest on any insured or direct loan made under the RE Act invest the deferred amounts in rural development projects. The Deferment program is used to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses.

*Need and Use of the Information:* RUS will collect information to determine eligibility; specific purposes for which the deferment amount will be utilized; the term of the deferment the borrower will receive; the cost of the total project and degree of participation in the financing from other sources; verification that the purposes will not violate limitations established in 7 CFR

1703-H. If the information were not collected, RUS would be unable to determine eligibility for a project.

*Description of Respondents:* Not-for-profit; business or other for-profit.

*Number of Respondents:* 4.

*Frequency of Responses:* Recordkeeping; reporting: On occasion.  
*Total Burden Hours:* 140.

#### Forest Service

*Title:* Forest Industries Data Collection System.

*OMB Control Number:* 0596-0010.

*Summary of Collection:* The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 requires the Forest Service (FS) to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of the resources. Forest product and other wood-using industries are important to state, regional, and national economies. In most southern states, the value of rounded timber products is ranked either first or second in relation to other major agricultural crop. The importance and value of the timber products industry is significant in other regions of the United States as well. The FS will collect information using questionnaires.

*Need and Use of the Information:* FS will collect information to monitor the types, species, volumes, sources, and prices of the timber products harvested throughout the Nation. The data will be used to develop specific economic development plans for new forest-related industry in a State and to assist existing industry in identifying raw material problems and opportunities. If the information were not collected, data would not be available for sub-state, state, regional, and national policy makers and program developers to make decisions related to the forestland on a scientific basis.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 2,909.

*Frequency of Responses:* Reporting: On occasion; Annually.

*Total Burden Hours:* 2,369.

#### Animal & Plant Health Inspection Service

*Title:* Poultry Imports and Export.

*OMB Control Number:* 0579-0141.

*Summary of Collection:* Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as

to take actions to prevent and to manage exotic diseases such as exotic Newcastle disease and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal & Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. A Final rule was published on July 19, 1999, that allow the importation of poultry carcasses from regions of the world where exotic Newcastle disease (END) exists, provided the carcasses did not originate in these regions, and provided the carcasses are processed and shipped according to APHIS requirements. APHIS will collect information using a certificate of origin, serial numbers, records that must be maintain for 2 years and a cooperative service agreement that must be signed.

*Need and Use of the Information:* APHIS will collect information to ensure that imported poultry carcasses pose a negligible risk of introducing END into the United States.

*Description of Respondents:* Business or other for-profit.

*Number of Responses:* 4.

*Frequency of Responses:* Recordkeeping; reporting; On occasion.  
*Total Burden Hours:* 30.

**William McAndrew,**

*Departmental Clearance Officer.*

[FR Doc. 00-9346 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### Notice of Intent To Grant Exclusive License

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

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Genetics & IVF Institute, of Fairfax, Virginia, an exclusive license for all uses in the field of human sperm cell sorting to the invention disclosed in Patent No. 5,985,216 issued November 16, 1999, entitled "Flow Cytometry Nozzle for High Efficiency Cell Sorting." Notice of availability was published in the **Federal Register** on May 19, 1998.

**DATES:** Comments must be received on or before June 13, 2000.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, Room 4-1158, 5601 Sunnyside Avenue, Beltsville, Maryland 20705-5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Genetics & IVF Institute, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Richard M. Parry, Jr.,**

*Assistant Administrator.*

[FR Doc. 00-9271 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-03-P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 00-009N]

#### Membership on the National Advisory Committee on Meat and Poultry Inspection; Nominations

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection (NACMPI). The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the meat and poultry inspection programs. Nominations for membership are being sought from individuals representing producers, processors, marketers, exporters and importers of meat and poultry products; academia; State government officials; and consumers. This notice also informs members of the public as to how they may receive copies of the weekly FSIS Constituent Update, which provides information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other relevant information.

**DATES:** Nomination packages for membership must be postmarked no later than June 30, 2000.

**ADDRESSES:** Nominations should be sent to Ms. Margaret Glavin, Associate Administrator, Food Safety and Inspection Service, USDA, Room 331-E, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250-3700.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Micchelli, Evaluation and Analysis Division, Food Safety and Inspection Service, Room 3833, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250-3700, 202-720-6269; Fax: 202-690-1030; E-mail: michael.micchelli@usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Department of Agriculture is soliciting nominations for membership on the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and sections 5(a)(3), 5(c), 8(b) and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

Appointments to the Committee will be made by the Secretary of Agriculture. Nominees will be considered without discrimination for any reason such as race, color, religion, sex, national origin, age, or marital status. Nominees will initially serve two-year terms. No member may serve on the NACMPI for more than three (3) consecutive terms. The duties of the Committee are solely advisory. Committee members will be reimbursed for official travel expenses only. It is anticipated that the Committee will meet at least annually.

The nomination package should include the following information:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the NACMPI.
2. A resume' or curriculum vitae.

All nominees will be requested to complete Form AD-755, Advisory Committee Membership Background Information. This form will be mailed to all nominees upon receipt of their nomination. To ensure that recommendations of the NACMPI take into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and

persons with disabilities. USDA is actively soliciting nominations of qualified minorities, women, and persons with disabilities through outreach to minority-focused media outlets, the **Federal Register**, and other appropriate methods.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, farm, and consumer interest groups, allied health professionals and scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the FSIS Congressional and Public Affairs Office, at (202) 720-5704.

Done at Washington, DC on April 10, 2000.  
**Thomas J. Billy,**  
*Administrator.*

[FR Doc. 00-9272 Filed 4-12-00; 8:45 am]

BILLING CODE 3410-DM-P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 00-008N]

#### National Advisory Committee on Meat and Poultry Inspection

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on May 16-17, 2000, to review and discuss four issues: (1) The requested changes to the Food Safety and Inspection Service's (FSIS) Hazard

Analysis and Critical Control Point (HACCP) regulations—industry petition, (2) the extension of the USDA's meat and poultry inspection program to additional species (including the use of nitrates in non-amenable species), (3) E. coli O157:H7 developments, and (4) Listeria developments. The three subcommittees of the full Committee will also meet on May 16, 2000, to continue working on issues discussed during the full Committee session. All interested parties are welcome to attend the meeting and to submit written comments and suggestions concerning issues the Committee will review and discuss. This notice also informs members of the public as to how they may receive copies of the weekly FSIS Constituent Update, which provides information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other relevant information.

**DATES:** The full Committee will hold a public meeting on Tuesday and Wednesday, May 16-17, 2000, from 8:30 a.m. to 5:30 p.m. Sub-committees will hold public meetings on May 16, 2000, from 7:00 p.m. to 9:00 p.m.

**ADDRESSES:** All Committee meetings will take place at the Quality Hotel & Suites, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201; telephone (703) 524-4000. The full committee will meet in the Jefferson Room. The Subcommittees will meet in the Kennedy, Roosevelt, and Lincoln Rooms. A meeting agenda is available on the FSIS Web Site at <http://www.fsis.usda.gov/OPPDE/nacmpi> which is a sub-web page of the FSIS Homepage at <http://www.fsis.usda.gov>. Send written comments, in triplicate, to FSIS Docket Clerk, U.S. Department of Agriculture, Docket #00-008N, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700.

Comments may also be sent by facsimile (202) 205-0381. The comments and the official transcript of the meeting, when they become available, will be kept in the Docket Clerk's office at the address provided above. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Michael N. Micchelli at (202) 720-6269, FAX (202) 720-2345, or E-mail [michael.micchelli@usda.gov](mailto:michael.micchelli@usda.gov). Persons requiring a sign language interpreter or other special accommodations should notify Mr. Micchelli by April 25, 2000, at the above numbers or e-mail. Information is also available on FSIS

Web Site at <http://www.fsis.usda.gov/OPPDE/nacmpi>.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 22, 1999, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to Federal and State meat and poultry inspection programs pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The FSIS Administrator is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors, and marketers from the meat and poultry industry; and State government officials. The current members of the NACMPI are: Magdi Abadir, Cuisine Solutions; Terry Burkhardt, Wisconsin Bureau of Meat Safety and Inspection; Dr. James Denton, University of Arkansas; Caroline Smith-DeWaal, Center for Science in the Public Interest; Nancy Donley, Safe Tables Our Priority; Carol Tucker Foreman, Food Policy Institute, Consumer Federation of America; Dr. Cheryl Hall, Zacky Farms, Inc.; Kathleen Hanigan, Farmland Foods; Dr. Lee C. Jan, Texas Department of Health; Alice Johnson, National Turkey Federation; Dr. Collette Schultz Kaster, Premium Standard Farms; Dr. Daniel E. LaFontaine, South Carolina Meat-Poultry Inspection Department; Michael Mamminga, Iowa Department of Agriculture; Dr. Dale Morse, New York Office of Public Health; Rosemary Mucklow, National Meat Association; Donna Richardson, Howard University Cancer Center; and Gary Weber, National Cattlemen's Beef Association.

The Committee has three subcommittees that deliberate on specific issues and make recommendations to the whole Committee. The Committee makes recommendations to the Secretary of Agriculture.

Members of the public will be required to register before entering the meeting.

##### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS

Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, farm, and consumer interest groups, allied health professionals and scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the FSIS Congressional and Public Affairs Office, at (202) 720-5704.

Done at Washington, DC on April 10, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00-9273 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-DM-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection; Request for Comments; Timber Purchasers' Costs and Sales Data

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate a previously approved information collection. The collected information will help the Forest Service facilitate the appraisal and sale of timber on National Forest System lands. Information will be collected from purchasers of this timber.

**DATES:** Comments must be received in writing on or before June 13, 2000.

**ADDRESSES:** All comments should be addressed to Rex Baumbach, Forest Management, Mail Stop 1105, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090.

Comments also may be submitted via facsimile to (202) 205-1045 or by email to: [rbaumbach@fs.fed.us](mailto:rbaumbach@fs.fed.us).

The public may inspect comments received in the Office of the Director, Forest Management Staff, Forest Service, USDA, Room 3NW, Yates Building, 201 14th Street, SW, Washington, D.C. Callers are urged to

call ahead to facilitate entrance into the building.

**FOR FURTHER INFORMATION CONTACT:** Rex Baumbach, Timber Sale Contract Administration Specialist, Forest Management, at (202) 205-0855.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Multiple-Use Sustained Yield Act of 1960, the Forest Rangeland Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976 authorize the Forest Service to sell forest products and National Forest System timber.

Forest Service timber appraisers develop advertised timber sale prices using a transaction evidence method of appraisal. Transaction evidence appraisals begin with an average of past successful bids by timber purchasers for timber for which the stumpage rate has been adjusted for the timber sale and the market conditions at the time. The Forest Service transaction evidence appraisal system includes costs incurred by the timber purchaser to log the timber and get the logged timber to the lumber mill.

The Western Wood Products Association (WWPA) cooperates with the agency to evaluate the lumber and other products values, provided by the timber purchasers to the WWPA, which the Forest Service uses to develop average value information for transaction evidence appraisals. This average value information enables Forest Service appraisers to better estimate the fair market value of a particular sale of National Forest System timber and helps the appraisers develop the prices that are advertised in local newspapers for the timber sale. The timber will be sold at not less than the appraised value and not below a minimum stumpage rate established by the Chief.

Timber purchasers also provide information on product values. Product values are the values of products that result from the harvested timber, such as lumber chips, plywood, and pressed board. The value of these products may vary from one geographical location to another. In many areas, product values may be purchased from the Western Wood Products Association.

##### Description of Information Collection

The following describes the information collection to be reinstated:

*Title:* Timber Purchasers' Costs and Sales Data.

*OMB Number:* 0596-0017.

*Expiration Date of Approval:* September 30, 1998.

*Type of Request:* Reinstatement of an information collection previously approved by the Office of Management and Budget.

*Abstract:* Forest Service personnel will evaluate the collected information to facilitate the appraisal and sale of timber on National Forest System lands.

Forest Service timber appraisers will use a transaction evidence method of appraisal to update the selling values and advertised rates of National Forest System timber.

The Forest Service transaction evidence appraisal system includes costs incurred by the timber purchaser to log the timber and get the logged timber to the lumber mill. Timber purchasers will provide incurred cost information, upon written request from the Forest Service. The costs incurred by timber purchasers should include items similar to the following: (1) falling and bucking, (2) skidding and loading, and (3) hauling. The Forest Service will share this cost data with States and other Federal agencies for their use in developing appraisals of timber sales.

Forest Service personnel also will request product value information from timber sale purchasers. Timber purchasers will provide both the cost data and the product value information via surface mail or electronic mail, using their own report formats. Some timber sale purchasers, instead of sending the requested information to the agency, will provide on-site access to Forest Service personnel, so the information may be retrieved from the timber purchasers' files or electronic databases.

Data gathered in this information collection are not available from other sources.

*Estimate of Annual Burden:* 1 hour.

*Type of Respondents:* Purchasers of National Forest System timber.

*Estimated Annual Number of Respondents:* 20.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 20 hours.

##### Comment Is Invited

*The agency invites comments on the following:* (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: April 7, 2000.

**James R. Furnish,**

*Deputy Chief, National Forest System.*

[FR Doc. 00-9290 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-11-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Windmill Timber Harvest in the Mill Creek Drainage, Gallatin National Forest, Park County, Montana

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice, intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service intends to prepare an environmental impact statement (EIS) to disclose the environmental effects of the Windmill timber harvest and associated activities in the Mill Creek drainage located in the Absaroka/Beartooth Mountain Range, Gallatin National Forest, Livingston Range District, Park County, Montana.

The proposed timber harvest of approximately 5 mmbf from an estimated 650 acres of timbered lands and associated actions including road construction, reconstruction and restoration, prescribed fire and reforestation are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The Windmill Timber Sale is one of 12 project being proposed on the Gallatin National Forest to contribute time volume to assist in the acquisition of four sections of land as directed by the Gallatin Land Consolidation Act of 1998 (PL 105-267). In addition, harvest of this sale would: contribute toward providing a flow of wood products from National Forest lands, proposed road restoration of roads would maintain or improve watershed conditions,

proposed prescribed fire would reduce the potential for catastrophic fires, and tree planting in regeneration units would address reforestation.

**DATES:** Written comments should be received by May 10, 2000.

**ADDRESSES:** Submit written comments on proposed activities or a request to be placed on the project mailing list to Terri Marceron, District Ranger, Livingston Ranger District, 5245 Highway 89 South, Livingston, Montana, 59047.

**FOR FURTHER INFORMATION CONTACT:** JT Stangl, Project Leader, Livingston Ranger District, Gallatin National Forest, Phone (406) 222-1892.

**SUPPLEMENTARY INFORMATION:** The project area consists of National Forest lands located in T6S, R9E, Sec. 10, 11, 14, 15, 19, 23, 24, 25 and 30; and T6S, R10E, Sec 32, 33, 34, and 35 and T7S, R10E Sec 2, 4, and 5, P.M. MT. The majority of activities would occur within the Counts, West Fork, Passage and Colley Creek areas in the Mill Creek drainage. Timber harvest is proposed on land that is designated as suitable for timber management by the Gallatin Forest Plan (USDA 1987). Timber harvest would occur outside of roadless area as designed using Region One protocol. New roads would be effectively closed to vehicle traffic after completion of post-sale activities. The EIS would also analyze the restoration of some existing roads, that are generally not open to motorized public use, to maintain or improve watershed conditions.

The USDA Forest Service, "Report to the Montana Congressional Delegation Proposed Gallatin Land Consolidation" (September 1997) and the Gallatin Forest Plan (USDA 1987) provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to: (1) Identify potential issues, (2) Identify issues to be analyzed in depth, (3) Eliminate insignificant issues or those which have been covered by a relevant precious environmental analysis, such as the Gallatin Forest Plan EIS, (4) Identify alternatives to the proposed action, (5) Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects) and (6) Determine potential cooperating agencies and task assignments. Preliminary issues identified by Forest Service specialist include assessing if

proposed activities would effect: threatened and endangered species, sensitive fish, wildlife and plant species, ungulate habitat, Neotropical migratory bird habitat, management indicator species habitat, fragmentation, vegetative structural diversity, soils, water quality, noxious weeds, fire management, visual quality, cultural resources, recreation use special uses, roadless areas, and public safety. This list will be verified, expanded, or modified based on public scoping for this proposal.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7). In addition to scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individual or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November of 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Mill Creek area participate at that time. The Final EIS is scheduled for completion by the end of March 2001.

The Forest Service believes, at the early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts in agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-

day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues, comments should be as specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulatory for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. 130, Federal Building, Bozeman, MT 59771.

Dated: May 3, 2000.

**Richard Inman,**

*Acting Forest Supervisor.*

[FR Doc. 00-9221 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-11-M

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### New Porter Bayou, Mississippi

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the New Porter Bayou Watershed, Bolivar and Sunflower Counties, Mississippi.

**FOR FURTHER INFORMATION CONTACT:** Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an

environmental impact statement are needed for this project.

The project concerns a plan for flood prevention and drainage. Alternatives under consideration to reach these objectives include systems for channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from Homer L. Wilkes, State Conservationist, at the above address.

Dated: March 24, 2000.

**Homer L. Wilkes,**

*State Conservationist, USDA-NRCS, Jackson, MS.*

[FR Doc. 00-9364 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-16-P

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Notice of Availability of the "Natural Resources Conservation Service Conservation Programs Manual—Part 513: Resource Conservation and Development (RC&D) Program"

**AGENCY:** Natural Resources Conservation Service, Department of Agriculture.

**ACTION:** Notice and request for comments.

**SUMMARY:** The United States Department of Agriculture (USDA) seeks comments on the proposed revision of the "Natural Resources Conservation Service Conservation Programs Manual—Part 513: Resource Conservation and Development (RC&D) Program." USDA asks for comments from RC&D Council members and other individuals; tribal, State, and local governments and organizations involved in either natural resource conservation or community development groups. These comments will assist USDA in policy development and implementation of the RC&D program. This manual is intended for use by Natural Resources Conservation Service (NRCS) and other USDA staff members, RC&D Council members, and others that either will develop RC&D applications or participate in the RC&D program.

**EFFECTIVE DATES:** Comments will be received beginning April 14, 2000. The comment period will end on June 22, 2000. All comments post-marked by June 22, 2000, will be accepted.

**ADDRESSES:** Address all requests and comments to: Terry D'Addio, National RC&D Program Manager, Natural Resources Conservation Service, Room 6013, South Building, 14th & Independence Avenue, SW, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Terry D'Addio, Natural Resources Conservation Service, (202) 720-0557; fax: (202) 690-0639; e-mail: terry.daddio@usda.gov

**SUPPLEMENTARY INFORMATION:** The "Conservation Programs Manual: Part 513—RC&D Program" is a document intended for use by NRCS and other USDA staff members, RC&D Council members, and others that either will develop RC&D applications or participate in the RC&D program. The purpose of this document is to provide policy guidance for the RC&D program, not to establish regulatory requirements. The RC&D program was authorized to encourage and improve the capability of State and local units of government and local nonprofit organizations in rural areas to plan, develop, and implement programs for resource conservation and development. Through the establishment of RC&D areas, the program establishes or improves coordination systems in communities and builds community leadership skills to effectively use Federal, State, and local programs for the communities' benefit.

Current program objectives focus on improvements achieved through natural resources conservation and community development. Such activities lead to sustainable communities, prudent land use, and the sound management and conservation of natural resources.

Assistance is provided, as authorized by the Secretary of Agriculture, to designated RC&D areas through their organized RC&D Councils (comprised of local elected officials and civic leaders). RC&D Councils, in association with local, State, and Federal governments—and other non-profit organizations—initiate and lead the planning and implementation of their locally developed RC&D area plans. Councils also obtain assistance from other local, State, and Federal agencies; private organizations; and foundations.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination

on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination to USDA, write to Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410, or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed at Washington, DC, on March 29, 2000.

**Pearlie S. Reed,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 00-9363 Filed 4-13-00; 8:45 am]

**BILLING CODE 3410-16-P**

#### **COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

##### **Procurement List; Proposed Additions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** May 15, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies

employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

##### *Commodity*

Handle, Jack, 5120-01-032-6042

NPA: Knox County ARC, Knoxville, Tennessee

##### *Services*

Distribution/Logistics Service

Defense Supply Center—Philadelphia, Philadelphia, Pennsylvania North Central Region

Lansing, Michigan

NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Medical Courier Services, Veterans Affairs Medical Center, 4100 West 3rd Street, Dayton, Ohio

NPA: The Clovernook Center, Opportunities for the Blind, Cincinnati, Ohio

Release of Information Copying Services for the following locations:

Veterans Affairs Medical Center, 421 North Main Street, Leeds, Massachusetts

Springfield Outpatient Clinic, 1550 Main Street, Springfield, Massachusetts

NPA: Massachusetts Commission for the Blind Ferguson Industries for the Blind, Cambridge, Massachusetts

**Leon A. Wilson, Jr.,**

*Executive Director.*

[FR Doc. 00-9353 Filed 4-13-00; 8:45 am]

**BILLING CODE 6353-01-P**

#### **COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

##### **“Proposed Deletion to Procurement List” Correction**

In the document appearing on page 18281, FR document 00-8682, in the issue of April 7, 2000, in the third column, the listing for Enamel, Lacquer, NSN 8010-00-935-7085 should have been 8010-00-935-7075.

**Leon A. Wilson, Jr.,**

*Executive Director.*

[FR Doc. 00-9354 Filed 4-13-00; 8:45 am]

**BILLING CODE 6353-01-P**

#### **COMMISSION ON CIVIL RIGHTS**

##### **Agenda and Notice of Public Meeting of the Vermont Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 4:30 p.m. on Wednesday, May 10, 2000, at the Blue Cross-Blue Shield of Vermont, Conference Room Number 1, One East Road, Berlin, Vermont 05601. The Committee will hold a planning meeting to discuss the status of legislative and community organization initiatives to combat harassment, plan future coordination with educational leaders, and develop its next project activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 4, 2000.

Lisa Kelly,

Special Assistant to the Staff Director.

[FR Doc. 00-9222 Filed 4-13-00; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-815 & A-580-816]

#### Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Extension of Time Limit

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative reviews of Certain Cold-Rolled Carbon Steel Flat Products & Certain Corrosion-Resistant Carbon Steel Flat Products from Korea. These reviews cover the period August 1, 1998 through July 31, 1999.

**EFFECTIVE DATE:** April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marlene Hewitt or Jim Doyle, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC; telephone (202) 482-1385 or 482-0159, respectively.

**SUPPLEMENTARY INFORMATION:** Due to the complexity of issues involved in these cases, it is not practicable to complete these reviews within the original time limit. The Department is extending the time limit for completion of the preliminary results from May 2, 2000 until August 30, 2000, in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended. See memorandum to Joseph A. Spetrini from Edward Yang regarding the extension of the case deadline. The time limit for the final results would remain at 120 days after the preliminary results are issued. This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. Sec. 1675 (a)(3)(A)).

Dated: April 7, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00-9373 Filed 4-13-00; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-815]

#### Gray Portland Cement and Clinker from Japan; Amended Final Results Pursuant to Court Decision

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Amended Final Results Pursuant to Court Decision.

**SUMMARY:** On April 29, 1998, the United States Court of International Trade ("CIT") affirmed the determination made by the Department of Commerce ("the Department") pursuant to a remand of the final results of the first antidumping duty administrative review of Gray Portland Cement and Clinker from Japan. *Ad Hoc Committee of Southern California Producers of Gray Portland Cement v. United States*, Slip Op. 98-57 (CIT, April 29, 1998). In the remand determination, the Department (1) included all freight-out and insurance expenses in the computation of total cost when calculating profit; (2) made no deduction to fair market value (FMV) for pre-sale movement expenses when making purchase price (PP) comparisons, and counted the expenses as indirect selling expenses when making exporter sales price (ESP) comparisons; (3) adjusted U.S. price by correcting the deduction for relevant freight expenses; and (4) corrected the per-unit service station expenses included in calculating cost of production (COP). As this decision is now final and conclusive, we are amending the final results.

**EFFECTIVE DATE:** April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230; telephone: (202) 482-5253.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 20, 1993, the Department published the final results of the first administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Japan (58 FR 48826). On October 18, 1993, the Department published its amended final results (58 FR 53705). The review covered one manufacturer/exporter, Onoda Cement Co., Ltd. ("Onoda"), of the subject merchandise for the period October 31, 1990 through April 30,

1992. The petitioner in this case, the Ad Hoc Committee of Southern California Producers of Gray Portland Cement, and Onoda subsequently appealed the Department's determination before the CIT on ten issues. The CIT issued a remand, at Commerce's request, with respect to four issues and affirmed all other issues. In particular, the Court remanded the case to the Department to (1) reconsider the treatment of freight-out and inland insurance expenses incurred for transportation of the subject merchandise to unrelated customers in the United States; (2) determine the extent to which pre-sale home market transportation costs should be deducted from FMV; (3) calculate the correct amount of freight expenses incurred for shipping to unrelated U.S. customers; and (4) re-open the record to obtain data and recalculate the per-unit amount of service station expenses to be included in calculating COP. *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement v. United States*, 19 CIT 1398, 914 F. Supp. 525 (1995) ("Ad Hoc I").

The Department filed its redetermination on February 22, 1996. The Department, for purposes of the remand, (1) included all freight-out and insurance expenses in the computation of total cost when calculating profit; (2) made no deduction to FMV for pre-sale movement expenses when making PP comparisons, and counted the expenses as indirect selling expenses when making ESP comparisons; (3) did not reduce freight-out costs before deducting them from U.S. price; and (4) corrected the per-unit service station expenses included in calculating COP. On April 29, 1998, the CIT affirmed the Department's remand determination. *Ad Hoc Committee of Southern California Producers of Gray Portland Cement v. United States*, Slip Op. 98-57 (CIT, April 29, 1998). No parties have appealed this decision.

As a result of the remand determination, the final dumping margin for the period October 31, 1990 through April 30, 1992 is as follows:

Manufacturer	Margin (Percent)
Onoda Cement Co., Ltd .....	33.95

The Department will issue appraisal instructions directly to the U.S. Customs Service. The final remand determination of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final remand determination of this review, except as noted below.

Further, we note that the International Trade Commission (ITC), on remand from the CIT in *Mitsubishi Materials Corp. v. United States*, 820 F. Supp. 608 (CIT 1993), determined that imports of Gray Portland Cement and Clinker from Japan threaten material injury to the U.S. industry (ITC publication 2657, *aff'd*, 918 F. Supp 422, 1996). Therefore, the Department shall instruct the U.S. Customs Service to terminate suspension of liquidation and refund any cash deposit and release any bond or other security for all remaining unliquidated shipments of Gray Portland Cement and Clinker from Japan, including those produced by Onoda, entered or withdrawn from warehouse, for consumption prior to May 8, 1991, the date of publication of the ITC's original final determination in the **Federal Register**.

Dated: April 7, 2000.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-9375 Filed 4-13-00; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-506][A-201-504][A-583-508]

#### Continuation of Antidumping Duty Orders: Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty orders: Porcelain-on-steel cooking ware from China, Mexico, and Taiwan.

**SUMMARY:** The Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on porcelain-on-steel ("POS") cooking ware from China, Mexico, and Taiwan are likely to lead to continuation or recurrence of dumping.<sup>1</sup> On April 5, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that

revocation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 17902). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan.

**EFFECTIVE DATE:** May 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482-5050 or (202) 482-3217, respectively.

#### SUPPLEMENTARY INFORMATION

##### Background

On February 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 4840 and 64 FR 4896, respectively) of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware from the People's Republic of China*, 64 FR 50271 (September 16, 1999), *Final Results of Full Sunset Review: Porcelain-on-Steel Cooking Ware from Mexico*, 65 FR 281, (January 4, 2000), and *Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware from Taiwan*, 64 FR 50487, (September 17, 1999)).

On April 5, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan*, 65 FR 17902 (April 5, 2000) and USITC Publication 3286, Investigation Nos. 731-TA-297-299 (Review), March 2000).

#### Scope

*China*—Imports covered by this order are shipments of POS cooking ware from China, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") number 7323.94.00.

*Mexico*—Imports covered by this order are shipments of POS cooking ware from Mexico, which includes tea kettles, that do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under HTS number 7323.94.00. Kitchenware currently entering under HTS number 7323.94.00.30 is not subject to the order.

*Taiwan*—Imports covered by this order are shipments of POS cooking ware from Taiwan. The product under this antidumping duty order does not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware and teakettles are not subject to this order. The merchandise is currently classifiable under the HTS number 7323.94.00.

The following are *Notices of Scope Rulings* with respect to Taiwan. On October 30, 1996, Cost Plus, Inc.'s 10 piece porcelain-on-steel fondue set was found to be within the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1992)). On August 18, 1995, Blair Corporation's Blair cooking ware items #1101 (seven piece cookware set), #271911 (eight-quart stock pot), and #271921 (twelve-quart stock pot) were found to be outside the scope of the order (*see Notice of Scope Rulings*, 60 FR 36782 (July 18, 1995)). On September 3, 1992, in response to a request from Mr. Stove Ltd., stove top grills and drip pans were found to be outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)). On September 25, 1992, in response to a request from Metrokane Inc., the "Pasta Time" pasta cooker was found to be within the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)). On August 23, 1990, in response to a request from RSVF, BBQ grill baskets were found to be outside the scope of the order (*see Notice of Scope Rulings*, 55 FR 43020 (October 25, 1990)).

<sup>1</sup> See *Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware From the People's Republic of China*, 64 FR 50271 (September 16, 1999), *Final Results of Full Sunset Review: Porcelain-on-Steel Cooking Ware From Mexico*, 65 FR 281 (January 4, 2000), and *Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware From Taiwan*, 64 FR 50487 (September 17, 1999).

**Determination**

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751 (c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than March 2005.

Dated: April 7, 2000.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-9374 Filed 4-13-00; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-815]

**Sulfanilic Acid From the People's Republic of China: Notice of Extension of Time Limit for Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 14, 2000.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers the period August 1, 1998 through July 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Robert James, AD/CVD Enforcement Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-3964 or (202) 482-0649, respectively.

**Postponement of Preliminary Results of Review**

On October 1, 1999, the Department published a notice of initiation of an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China, covering the period August 1, 1998 through July 31, 1999 (64 FR 53318). The preliminary results are currently due no later than May 2, 2000.

Section 751(a)(3)(A) of the Tariff Act, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for a preliminary determination to a maximum of 365 days.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results to no later than August 30, 2000. See Memorandum from Richard O. Weible to Joseph A. Spetrini, dated April 3, 2000, which is on file in the Central Records Unit, Room B-099 of the main Commerce Building. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 3, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Enforcement Group III.*

[FR Doc. 00-9372 Filed 4-13-00; 8:45 am]

BILLING CODE 3510-DS-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 041000D]

**Western Pacific Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its 103rd meeting in Honolulu, Hawaii. A public meeting will be held to discuss banning bottom longlining for pelagic management unit species in Federal waters around Hawaii as a

preferred alternative under an amendment to the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (Pelagics FMP). In addition, the Council will consider the State of Hawaii's bill (H.B. 1947) to ban shark finning, in light of the Council's Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. The Council will also consider banning spear fishing with SCUBA apparatus during the day and night as a preferred alternative under the Draft Environmental Impact Statement/ Fishery Management Plan for the Coral Reef Ecosystem FMP (DEIS/FMP).

**DATES:** The Council meeting will be held on May 1, 2000, at 11 p.m.

**ADDRESSES:** The meeting will be held at the Western Pacific Fishery Management Council office, at 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:**

Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

**SUPPLEMENTARY INFORMATION:** The agenda during the full Council meeting will include the items below. The order in which agenda items will be addressed may change.

1. Introductions
2. Approval of Agenda
3. Approval of the 102nd Meeting Minutes
4. Banning bottom longline fishing for pelagic management unit species in Federal waters around Hawaii as a preferred alternative under the Pelagics FMP
5. State of Hawaii bill on shark-finning
6. Banning spear fishing with SCUBA apparatus during day and night in the Western Pacific Region, as a preferred alternative under the Coral Reef Ecosystem DEIS/FMP
7. Issues relating to fisheries under Council jurisdiction in the Northwestern Hawaiian Islands
8. Approval of Elliot Lutali's membership of Pelagic Plan Team
9. Public comment
10. Council action
11. Other business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of

the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to the meeting date.

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

Dated: April 11, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service. [FR Doc. 00-9350 Filed 4-13-00; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 041000A]

#### Endangered Species; Permits

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

**ACTION:** Receipt of an application for a scientific research permit (1236) and an application to modify a permit (1190).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from John A. Musick, Ph.D., of the College of William and Mary at Williamsburg, VA (JM-CWM)(1226) and NMFS has received an application for permit modifications from Dr. Charles Karnella, of NMFS' Pacific Islands Area Office (CK-PIAO)(1190).

**DATES:** Comments or requests for a public hearing on either the new application or modification request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 pm eastern standard time on May 15, 2000.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review by appointment in the Office of Protected

Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph. 301-713-1401).

#### FOR FURTHER INFORMATION CONTACT:

Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

#### Species Covered in this Notice

The following species are covered in this notice: endangered and threatened Green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) sea turtles; endangered Hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), and Leatherback (*Dermochelys coriacea*) sea turtles; and threatened Loggerhead sea turtle (*Caretta caretta*).

#### New Application Received

JM-CWM (1236) has requested a 5-year permit to take listed sea turtles in the coastal waters of Virginia, the Chesapeake Bay and in the US Virgin Islands (USVI). Research conducted in the Chesapeake Bay and coastal waters of Virginia will study inter-nesting movements of sea turtles in Virginia via satellite telemetry and to assess the effects of beach replenishment on turtle activities. Research conducted in the USVI will study habitat utilization of juvenile Hawksbill turtles at the Buck Island Reef National Monument off of

St. Croix, USVI. Both studies will capture, handle, tag (PIT, flipper, satellite, radio and acoustic), collect biological samples (via humeral bone biopsy, blood samples and laparoscopy) and release loggerhead, green, Kemp's ridley, hawksbill and leatherback turtles.

#### Modification Request Received

CK-PIAO requests a modification to Permit 1190. Permit 1190 authorizes the take of up to 10 olive ridley turtles annually that have been captured incidentally by longline fishery vessels in the Hawaiian region. These activities will aid in monitoring the Hawaiian longline fishery, a term and condition of the November 3, 1998 biological opinion on that fishery. In addition, these research activities are described in the Pacific Sea Turtle Recovery Plans. The incidental take of these turtles is covered by the incidental take statement of the November 3, 1998 opinion. The purpose of the research is to document and evaluate the incidental take of pelagic turtles by the longline fishery, to help estimate the impact of the fishery on listed turtles as individuals and as populations, and to determine methods to reduce that impact. Research will evaluate how incidental captures affect sea turtle anatomy and physiology as a function of season, location of take, water temperature, species, size, time of day, and gear configuration. The results of the research will help NMFS to better meet the goals and objectives of the Pacific Sea Turtle Recovery Plans, the Hooking Mortality Workshop, and the requirements of Section 7 Biological Opinions developed for this fishery, and ultimately, to fulfill ESA responsibilities to protect, conserve, and recover listed species.

Incidentally-captured turtles will be examined, tagged, weighed, measured, resuscitated using approved techniques, have tissue samples taken, and be released. Some of these turtles will have transmitters attached. Dead turtles will be removed from the marine environment for research purposes, including necropsy and collection of life history data. Tissue samples may be used lab studies including the following: toxicology, histopathology, and genetic studies to identify nesting origins of incidentally taken turtles. The modification would increase the authorized annual take of olive ridleys from 10 to 15 annually due to greater coverage of the Hawaii longline fishery than originally anticipated in the original permit issued March 8, 1999.

Dated: April 10, 2000.

**Craig Johnson,**

*Acting Chief, Endangered Species Division,  
Office of Protected Resources, National  
Marine Fisheries Service.*

[FR Doc. 00-9351 Filed 4-13-00; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF DEFENSE

### Department of the Army

#### **Environmental Impact Statement for Follow-On Tests Including Design, Construction and Operation of One or More Pilot Test Facilities for Assembled Chemical Weapon Destruction Technologies at One or More Sites**

**AGENCY:** Program Manager, Assembled  
Chemical Weapons Assessment,  
Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** This announces the Army's intent to prepare an Environmental Impact Statement on the potential impacts of the design, construction and operation of one or more pilot test facilities for assembled chemical weapon destruction technologies at one or more chemical weapons stockpile sites, potentially simultaneously with any existing demilitarization programs and schedules at these sites. The size of the pilot tests and the location of the test facilities will be determined in this process.

**DATES:** Written comments must be received not later than May 30, 2000 in order to be considered in the Draft Environmental Impact Statement.

**ADDRESSES:** Written comments may be forwarded to the Program Manager Assembled Chemical Weapons Assessment, Public Affairs, Building E-5101, Room 219, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010-5424.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Gallegos at 410-436-4345, by fax at 410-436-5297, or via email at [ann.gallegos@sbccom.apgea.army.mil](mailto:ann.gallegos@sbccom.apgea.army.mil), or Program Manager Assembled Chemical Weapons Assessment, Public Affairs, Building E-5101, Room 212, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010-5424.

**SUPPLEMENTARY INFORMATION:** This proposed action continues the process that began when Congress established the Assembled Chemical Weapons Assessment Program through passage of Public Law 104-208. The authorizing legislation instructed the Department of Defense to identify and demonstrate

alternatives to baseline incineration for the destruction of assembled chemical weapons. Baseline incineration is the technology and process in place at the Johnston Atoll in the Pacific and at Deseret Chemical Depot in Utah. Assembled chemical weapons are munitions containing both chemical agents and explosives that are stored in the United States unitary chemical weapons stockpile. This includes rockets, projectiles, and mines. Unitary agents include chemical blister agents (*e.g.*, the mustard H, HD, and HT) and chemical nerve agents (*e.g.*, GB (Sarin) and VX).

With the National Defense Appropriations Act for Fiscal Year 1999, Congress directed the Program Manager, Assembled Chemical Weapons Assessment to plan for the pilot testing of alternatives technologies.

While all of the chemical stockpile sites were initially believed to be potential test sites, Edgewood Chemical Activity in Maryland, Newport Chemical Depot in Indiana, and Johnston Atoll in the Pacific Ocean have been eliminated from any consideration. Chemical stockpile sites at Edgewood and Newport will not be considered because no assembled chemical weapons are at those locations. Johnston Atoll will not be considered because all chemical weapons at the site will be destroyed before the National Environmental Policy Act analysis can be completed.

Sites at Anniston Chemical Activity in Alabama, Pine Bluff Chemical Activity in Arkansas, Pueblo Chemical Depot in Colorado, and Blue Grass Chemical Activity in Kentucky are being considered. Deseret Chemical Depot in Utah and Umatilla Chemical Depot in Oregon are not currently being considered because the current schedule for those plants indicates that the assembled chemical weapons will be destroyed prior to the time that a pilot facility would be ready to operate. If new information indicates that assembled chemical weapons in sufficient quantity will remain at these sites, then placement of the pilot facility at those sites will be analyzed.

Technologies under consideration include a variety of processes, such as, chemical neutralization, biological treatment, and supercritical water oxidation. The Program Manager, Assembled Chemical Weapons Assessment pilot tests will not halt or delay the operation or construction of any baseline incineration facility currently in progress. Transportation of assembled chemical weapons between stockpile sites is precluded by public law and will not be considered.

Alternatives that will be considered in the Environmental Impact Statement are: (a) No action, (b) pilot test of chemical neutralization followed by super critical water oxidation, and (c) pilot test of chemical neutralization followed by biological treatment.

There is a second Notice of Intent, entitled "Notice of Intent to Prepare an Environmental Impact Statement for the Design, Construction, and Operation of a Facility for the Destruction of Chemical Agent at Pueblo Chemical Depot, Colorado." The focus of this complementary Environmental Impact Statement will be specifically on what technology should be used for the destruction of the chemical weapons stockpile at Pueblo Chemical Depot. The focus of the Assembled Chemical Weapons Assessment Environmental Impact Statement is on whether or not pilot testing of any Assembled Chemical Weapons Assessment technology should be conducted, and if so where, but it will leave to the Pueblo Chemical Depot Environment Impact Statement the question whether a full-scale facility operated initially as a pilot facility should be constructed to destroy the stockpile at that location. The emphasis for the Assembled Chemical Weapons Assessment document is to consider Assembled Chemical Weapons Assessment technologies and the various stockpile sites that may be suitable for conducting pilot tests, considering such factors as existing facilities, resource requirements for each technology and the ability of the site to provide those resources, munitions configurations and availability at each site at the time actual testing would begin. At the conclusion of both these Environmental Impact Statements, the same officials will issue The Records of Decision.

During scoping meetings, the Program Manager, Assembled Chemical Weapons Assessment is seeking to identify significant issues related to the proposed action. The Program Manager, Assembled Chemical Weapons Assessment desires information on: (1) The potential chemical weapons stockpile sites and surrounding areas, (2) concerns regarding the testing and/or operation of multiple technologies at these sites, (3) issues regarding the scale of the pilot test facilities, and (4) specific concerns regarding any potential technologies. Individuals or organizations may participate in the scoping process by written comment or by attending public meetings to be held in Alabama, Arkansas, Colorado, Kentucky and the Washington, DC metropolitan area. The dates, times, and locations of these meetings will be

provided at least 15 days in advance by public notices in the news media serving the regions where the meeting will be located. The public meeting in Colorado will be held in conjunction with the public meeting on the site-specific Environmental Impact Statement.

Dated: April 10, 2000.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army,  
(Environment, Safety, and Occupational Health) OASA (I&E).*

[FR Doc. 00-9336 Filed 4-13-00; 8:45 am]

**BILLING CODE 3710-08-M**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### **Notice of Intent To Prepare an Environmental Impact Statement for the Design, Construction, and Operation of a Facility for the Destruction of Chemical Agent at Pueblo Chemical Depot, CO**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** This announces the Army's intent to prepare a site-specific Environmental Impact Statement on the potential impacts of the design, construction, and operation of a facility to destroy the mustard chemical agent and munitions stored at Pueblo Chemical Depot, Colorado. The proposed facility will be used to demilitarize the chemical agent and munitions currently stored at Pueblo Chemical Depot. The Environmental Impact Statement will examine potential environmental impacts of the following destruction facility alternatives:

- a. A baseline incineration facility.
- b. A full-scale facility to pilot test the single-story incineration process.
- c. A full-scale facility to pilot test the alternative technology successfully demonstrated by the Assembled Chemical Weapons Assessment Program—neutralization followed by supercritical water oxidation.
- d. A full-scale facility to pilot test the alternative technology successfully demonstrated by the Assembled Chemical Weapons Assessment Program—neutralization followed by biodegradation.
- e. No action, an alternative which will continue the storage of the mustard agent and munitions at Pueblo Chemical Depot.

To fulfill the need for destruction of the chemical weapons stockpile at Pueblo Chemical Depot in time to meet the requirements of the Chemical Weapons Convention, a pilot test

facility would have to be determined to be as safe as and as cost efficient as baseline incineration. It must also be capable of completing destruction of the Pueblo Chemical Depot stockpile by the later of the Chemical Weapons Convention destruction date or the date the Pueblo Chemical Depot stockpile would be destroyed if baseline incineration were used. This requirement is consistent with the requirement for certification contained in section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261.

**DATES:** Written comments must be received not later than May 30, 2000, in order to be considered in the Draft Environmental Impact Statement.

**ADDRESSES:** Written comments may be forwarded to the Program Manager for Chemical Demilitarization, Public Outreach and Information Office (ATTN: Mr. Gregory Mahall), Building E-4585, Aberdeen Proving Ground, MD 21010-4005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory Mahall at 410-436-1093, by fax at 410-436-5122, or by mail at gjahall@sbccom-emh1.apgea.army.mil or by mail at the above listed address.

**SUPPLEMENTARY INFORMATION:** In compliance with the National Environmental Policy Act (40, FR parts 1500-1508), the Army will prepare an Environmental Impact Statement to assess the health and environmental impacts of the design, construction, and operation of a facility to destroy the mustard chemical agent and munitions stored at Pueblo Chemical Depot, Colorado. Public law and international treaty require the mustard chemical agent and munitions to be destroyed. This Environmental Impact Statement will analyze the impact of the various methods of destroying the Pueblo stockpile. This action is proposed in concert with an announcement to programmatically address the process for follow-on tests for assembled chemical weapons destruction technologies at one or more sites. These two separate and distinct analyses serve complementary but distinct purposes.

This site-specific Environmental Impact Statement continues the process that began when Congress established the Program for Chemical Demilitarization in Public Law 99-145 in 1985. This law requires the destruction of the chemical weapons stockpile by a deadline established by treaty. That date is April 2007. This requirement still exists, notwithstanding the establishment of the Assembled Chemical Weapons Assessment Program. The Chemical Demilitarization

Program established by Public Law 99-145 published a Programmatic Environmental Impact Statement in January 1988. The Record of Decision states that the stockpile of chemical agents and munitions should be destroyed in a safe and environmentally acceptable manner by on-site incineration. Site-specific Environmental Impact Statements that tier off the Programmatic Environmental Impact Statement have been prepared for Johnston Atoll Chemical Agent Disposal System, Tooele Chemical Agent Disposal Facility, Anniston Chemical Agent Disposal Facility, Umatilla Chemical Agent Disposal Facility, and Pine Bluff Chemical Agent Disposal Facility.

The specific purpose of the current analysis is to determine the environmental impacts of the alternatives that could accomplish the destruction of the stockpile at Pueblo Chemical Depot by the required destruction date of April 2007, including the alternatives of using the technologies successfully demonstrated by the Assembled Chemical Weapons Assessment Program. In the course of the environmental impact analysis it will be determined whether construction of a full-scale plant operated initially as a pilot facility and utilizing any of the technologies successfully demonstrated in the Assembled Chemical Weapons Assessment Program is capable of destroying the stockpile at Pueblo Chemical Depot by the required destruction date (or as soon thereafter as could be achieved by constructing a destruction facility using the baseline incineration technology), and of doing so as safely as use of the baseline incineration technology. The Record of Decision, based on the 1988 Programmatic Environmental Impact Statement, does not limit or predetermine the results of this consideration, and it does not dictate the decision to be made in the Record of Decision following completion of the Environmental Impact Statement for this action at Pueblo Chemical Depot. The Army 1988 Programmatic Environmental Impact Statement will be used to cover Pueblo Chemical Depot actions in the event that an incineration technology is selected as the preferred alternative at the conclusion of the analysis of all the available alternatives.

The second document announcing the programmatic analysis for follow-on pilot testing of successful Assembled Chemical Weapons Assessment Program demonstration tests pursuant to the process established by Congress in

Public Laws 10-208 and 10-261 addresses a distinct but related purpose. That purpose is to determine which technologies can be pilot tested and if so, at which site or sites. That Environmental Impact Statement will be distinct from this site-specific Environmental Impact Statement in that its emphasis will be on the feasibility of pilot testing one or more of the demonstrated and approved Assembled Chemical Weapons Assessment Program technologies considering the unique characteristics of the alternative sites, to include Pueblo Chemical Depot. The Environmental Impact Statement will not consider the use of a full-scale facility operated initially as a pilot facility at Pueblo Chemical Depot; as discussed above, this alternative will be considered in the site specific Environmental Impact Statement for Pueblo Chemical Depot. At the conclusion of both of these Environmental Impact Statements, the same officials will issue the Records of Decision.

The Army will hold scoping meetings to aid in determining the significant issues related to the proposed action which will be addressed in the Environmental Impact Statement. The scoping process will incorporate public participation, including Federal, State of Colorado, and local agencies, as well as residents within the affected environment. The dates, times, and locations of scoping meetings will be announced in appropriate news media at least 15 days prior to these meetings.

Dated: April 10, 2000.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army  
(Environment, Safety, and Occupational  
Health) OASA (I&E).*

[FR Doc. 00-9337 Filed 4-13-00; 8:45 am]

**BILLING CODE 3710-08-M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Development of Ford Island at Pearl Harbor, Hawaii

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy (DON) announces its intent to prepare a Programmatic Environmental Impact

Statement (PEIS) for the development of Ford Island at Pearl Harbor, Hawaii in order to provide needed facilities and services and deliver overall benefits to the DON at the Pearl Harbor Naval Complex. This announcement also serves as notice that public scoping meetings will be held to solicit comments in accordance with NEPA, and request input as part of the Section 106 process of the National Historic Preservation Act (NHPA) of 1966, as implemented by the Advisory Council on Historic Preservation (ACHP) regulations (36 CFR part 800). The PEIS will also address the potential impacts of the sale or lease of DON property on Oahu, as authorized by 10 USC 2814 "Special authority for the development of Ford Island, Hawaii" and 10 U.S.C. 2871 *et seq.* "Alternate Authority for the Acquisition and Improvement of Military Housing."

**DATES:** Two public scoping meetings will be held to receive oral and written comments on the scope of the PEIS and public input relative to historic resources. The first meeting will be held on May 2, 2000, at 7 p.m. in the Washington Middle School, 1633 South King Street, Honolulu, Hawaii. The second meeting will be held on May 4, 2000, at 7 p.m. in the Makalapa Elementary School, 4435 Salt Lake Boulevard, Honolulu, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley Uehara (Code PLN231), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, STE 100, Pearl Harbor, Hawaii 96860-3134; telephone (808) 471-9338; fax (808) 474-5909; e-mail UeharaSY@efdpac.navfac.navy.mil.

**SUPPLEMENTARY INFORMATION:** The proposed action is to develop Ford Island to provide needed facilities and services and deliver overall benefits to the Department of the Navy (DON) at the Pearl Harbor Naval Complex. Ford Island is a central feature in the Pearl Harbor National Historic Landmark. The PEIS will also address the potential impacts of the sale or lease of Navy property on Oahu to fund the development on Ford Island, as authorized by 10 U.S.C. 2814 "Special authority for the development of Ford Island, Hawaii" (hereafter referred to as "Ford Island legislation") and 10 U.S.C. 2871 *et seq.* "Alternate Authority for the Acquisition and Improvement of Military Housing" (hereafter referred to as the Military Housing Privatization Initiative (MFPI) legislation). The Ford Island legislation allows DON to sell or lease properties in Hawaii and use the proceeds to develop Ford Island. The MHPI legislation allows DON to sell or

lease properties and use the proceeds to invest in public-private ventures to provide military housing. Properties available for potential sale or lease include: DON property at the Waikale Branch of Naval Magazine Lualualei; the golf course, family housing, and related property at the former Naval Air Station Barbers Point; family housing and related property at Iroquois Point/Puuloa; property on Pearl Harbor main side; and property on Ford Island. In addition to the Ford Island and MHPI legislation, other existing authorities could be used such as construction using traditional Military Construction or Non-appropriated Funds.

Due to the variety of actions envisioned for Ford Island, a PEIS is appropriate to provide an overview analysis of the affected environment and the potential cumulative impacts of reasonably foreseeable actions. Additional NEPA documentation may subsequently be required as specific projects are identified to meet the development objectives. The DON is considering adaptive reuse of existing structures on Ford Island and new construction to meet such facility requirements as: administrative and operational facilities, family and bachelor housing, transient lodging, support and commercial services, and infrastructure. Development could include filling some tidelands to construct a breakwater and/or marina. In addition to these requirements, approximately 75 acres on Ford Island could be made available for compatible commercial ventures. The purpose of developing Ford Island is to allow the DON to centralize operations for overall efficiency; to improve the quality of life for service members by improving work and leisure facilities and reducing commuting distances; and to reduce maintenance costs and congestion at main side by replacing antiquated and obsolete facilities. Development of some portions of Ford Island is constrained by existing facilities, historic resources, and operational requirements.

Alternatives to be considered in the PEIS will be potential land development options comprising various levels of land-use for Ford Island that are consistent with the development objectives. The DON will solicit input from private sector developers through a Request for Expressions of Interest in order to obtain their expertise in developing land-use alternatives. Any reasonable alternatives to DON's land-use concept will be considered, as will comments received from federal and state agencies, non-governmental organizations and the public during the scoping process.

The PEIS will evaluate the environmental effects associated with alternatives developed through the Request for Expressions of Interest and during the scoping process. Issues to be addressed include, but are not limited to: cultural and historic resources and impacts on the adjacent USS *Missouri* and USS *Arizona* Memorial; biological resources and habitat as may be impacted by in-water construction; water resources and hydrology; soils and geology; public services and utilities; traffic and noise; public health and safety; hazardous materials and wastes; and environmental justice. The analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts. No decision to implement any alternative, including the No-Action Alternative, will be made until the NEPA process is complete.

The DON will conduct two public scoping meetings to identify potentially significant issues, and to notify interested and affected parties of the PEIS process. A brief presentation describing the proposed action, historic resources related to the Pearl Harbor National Historic Landmark, and the NEPA process will precede the public's opportunity to comment relating to the scope of the PEIS. The purposes and format of the meetings are provided to invite public input on historic resource issues as part of the Section 106 process of the National Historic Preservation Act, as well as public involvement requirements specified under NEPA. It is important that interested federal, state, and local agencies, organizations and individuals take this opportunity to identify environmental and other related concerns that they believe should be addressed during preparation of the PEIS.

To allow time for all views to be shared, speakers will be asked to limit their oral comments to three minutes. Agencies and the public are invited to provide written comments in addition to, or in lieu of, oral comments at the public meetings. Scoping comments should clearly describe specific issues or topics that the commentator believes the PEIS should address and those that the NHPA process should address. Written comments are to be filed with Mr. Stanley Uehara (Code PLN231), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, STE 100, Pearl Harbor, Hawaii, and must be postmarked no later than May 15, 2000.

Dated: April 7, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00-9369 Filed 4-13-00; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF ENERGY

### Notice of Intent To Prepare an Environmental Impact Statement for the Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, KY and Notice of Floodplain Involvement

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement and Notice of Floodplain Involvement.

**SUMMARY:** The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500-1508), and the DOE NEPA regulations (10 CFR part 1021), to assess the potential environmental and human health impacts of a proposed project to design, construct, and operate a demonstration electric-power generating plant in Trapp, Clark County, Kentucky. The proposed Integrated Gasification Combined Cycle (IGCC) project, selected under the Clean Coal Technology Program, would be the first commercial-scale demonstration of the fixed bed British Gas Lurgi (BGL) gasification process in the United States. The proposed project would also demonstrate a high-temperature molten carbonate fuel cell and would involve the construction and operation of a nominal 400 MWe (megawatt-electric) IGCC power station. Feed to the BGL gasifiers would be solid fuel briquettes. The EIS will help DOE decide whether to provide 18 percent (approximately \$78M) of the funding for the currently estimated \$432 M proposed project.

The purpose of this Notice of Intent is to inform the public about the proposed action; announce the plans for a public scoping meeting; invite public participation in (and explain) the EIS scoping process; and solicit public comments for consideration in establishing the proposed scope and content of the EIS. The EIS will evaluate the proposed project and reasonable alternatives. Because the proposed project may affect floodplains, the EIS will include a floodplain assessment and a statement of findings in

accordance with DOE regulations for compliance with floodplain environmental review requirements (10 CFR part 1022).

**DATES:** To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received by May 31, 2000, to ensure consideration. Later comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at Trapp Elementary School, Trapp, Kentucky on May 4, 2000, beginning at 7:00 p.m. (See Public Scoping Process). The public is invited to an informal session at this location beginning at 4:00 p.m. to learn more about the proposed action. Displays and other forms of information about the proposed agency action and location will be available, and DOE personnel will be present to answer questions.

**ADDRESSES:** Written comments on the proposed EIS scope and requests to participate in the public scoping meeting should be addressed to: Mr. Roy Spears, NEPA Document Manager for the Kentucky Pioneer IGCC Demonstration Project, National Energy Technology Laboratory, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, WV 26507-0880. People who would like to otherwise participate in the public scoping process should contact Mr. Spears directly at: telephone 304-285-5460; toll free telephone 1-800-432-8330 (extension 5460); fax 304-285-4403; or e-mail [rspears@netl.doe.gov](mailto:rspears@netl.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information about this project or to receive a copy of the draft EIS for review when it is issued, contact Mr. Roy Spears at the address provided above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0119; telephone 202-586-4600 or leave a message at 1-800-472-2756.

**SUPPLEMENTARY INFORMATION:**

## Background and Need for Agency Action

Under Public Law 102-154, the U.S. Congress provided authorization and funds to DOE for conducting cost-shared Clean Coal Technology Program projects for the design, construction, and operation of facilities that significantly advance the efficiency and environmental performance of coal-using technologies and are applicable to either new or existing facilities. The purpose of this proposed agency action, which is known as the Kentucky Pioneer IGCC Demonstration Project, is to establish the commercial viability of the fixed bed BGL gasification process in the United States and the operation of a high temperature molten carbonate fuel cell using coal derived gas. The IGCC plants have long been recognized as being environmentally superior to conventional coal-fired power plants while operating at significantly higher efficiencies. The proposed project would demonstrate the improved economic viability and process flexibility of the BGL technology and promote fuel cells as a viable commercial source of electricity. A slipstream of syngas would be routed to a fuel cell to produce additional electricity in this demonstration project.

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that include long-term, high-risk activities that support the development of innovative concepts for a wide variety of coal technologies through the proof-of-concept stage. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must be demonstrated. The financial risk associated with technology demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. The Clean Coal Technology Program is a congressionally authorized program designed to accelerate the development of innovative technologies to meet the Nation's near-term energy and environmental goals; to reduce technological risk to the business community to an acceptable level; and to provide private sector incentives required for continued activity in innovative research and development directed at providing solutions to long-range energy supply problems.

## Proposed Action

The proposed action is for DOE to provide, through a cooperative agreement with Kentucky Pioneer Energy, L.L.C., financial assistance for the design, construction, and operation of the proposed project. The Kentucky Pioneer IGCC Demonstration Project would be designed for at least 20 years of commercial operation, beginning with a 2-year Clean Coal Technology demonstration, and would cost a total of approximately \$432 M; DOE's share would be approximately \$78 M (18%).

The proposed project includes the design, construction, and operation of a new 400 MWe IGCC power plant in rural Clark County, Kentucky. Kentucky Pioneer Energy, L.L.C. would use licensed gasification technology to fuel an electric generating facility. The facility would demonstrate the three following innovative technologies: (1) Gasification of fuel briquettes; (2) use of the syngas product as a clean fuel in combined cycle turbine generator sets; and (3) operation of a high temperature molten carbonate fuel cell on coal derived syngas. This project would be the first commercial scale application of the BGL gasification technology in the United States. This would also be the first commercial scale demonstration of a molten carbonate fuel cell operating on coal derived gas. Construction of the proposed plant would be expected to require approximately 30 months.

The project consists of the following components: Briquettes and raw material transportation, receipt, and storage; sulfur removal and recovery; a gasification plant; a combined cycle power unit; and a fuel cell. The IGCC facility would provide needed power capacity to the central and eastern Kentucky areas.

To supply the proposed plant and other potential customers with fuel briquettes, the parent company of the applicant, Global Energy, Inc., would construct a production facility at an off-site location. The briquettes would be made from high-sulfur coal (at least 50%) and refuse (municipal solid waste). The location of the briquette manufacturing facility remains to be determined. However, sources of low-cost high-sulfur coal, refuse availability and supporting infrastructure would be considered by Global in siting the facility. The EIS will consider potential environmental impacts from operation of a briquette facility.

The IGCC technology that Kentucky Pioneer Energy, L.L.C. would be demonstrating consists of the following four steps: (1) Generation of syngas by reacting fuel briquettes with steam and

oxygen, creating a high-temperature, chemically reducing atmosphere; (2) removal of contaminants, including particulates and sulfur; (3) combustion of clean syngas in a turbine generator to produce electricity; and (4) recovery of residual heat in the hot exhaust gas from the gas turbine in a heat recovery steam generator and use of the steam to produce additional electricity in a steam turbine generator.

The proposed project site comprises approximately 300 acres located within a 3,120-acre tract, owned by East Kentucky Power Cooperative (EKPC) in Clark County, Kentucky. The tract is 34 kilometers (21 miles) southeast of the city of Lexington. The site can be reached by State Highway 89 and accessed through a gated perimeter fence and access road.

The 300-acre proposed project site was previously disturbed by preliminary construction activities when EKPC began construction of its first-phase power station in the mid-1980s. That project was canceled in the early 1990s when decreased demand for electric power made the project uneconomical. EKPC completed preliminary grading, primary foundations, fire protection piping and rail spur access infrastructure installation before the project was cancelled.

The Kentucky Pioneer IGCC Demonstration Project would be designed to minimize expected or potential adverse impacts to the environment. Advanced process technology, efficient pollution control technology, and effective pollution prevention measures, including extensive reuse of internal process water, would be employed to minimize impacts.

## Alternatives

Section 102(2)(C) of NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. The goals of the proposed agency action establish the limits of its reasonable alternatives. Congress established the Clean Coal Technology Program with a specific purpose: To demonstrate the commercial viability of technologies that use coal in more environmentally benign ways than conventional coal technologies. Congress also directed DOE to pursue the goals of the legislation by means of partial funding (cost sharing) of projects owned and controlled by non-Federal government sponsors. This statutory requirement places DOE in a much more limited role than if the Federal

government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted because the agency must focus on alternative ways to accomplish its purpose that reflect both the application before it and the functions the agency plays in the decision process. It is appropriate in such cases for DOE to give substantial consideration to the applicant's needs in establishing a project's reasonable alternatives.

DOE developed an overall NEPA compliance strategy for the Clean Coal Technology Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a proposed project. As part of the NEPA strategy, the EIS for the Kentucky Pioneer IGCC Demonstration Project will tier from the Clean Coal Technology Programmatic Environmental Impact Statement (PEIS) that DOE issued in November 1989 (DOE/EIS-0146). Two alternatives were evaluated in the PEIS: (1) The no-action alternative, which assumed that the Clean Coal Technology Program was not continued and that power suppliers would continue to use conventional coal-fired technologies with flue gas desulfurization and nitrogen oxide controls to meet New Source Performance Standards; and (2) the proposed action, which assumed that Clean Coal Technology Program projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

The range of reasonable options to be considered in the EIS for the proposed Kentucky Pioneer IGCC Demonstration Project is determined in accordance with the overall NEPA strategy. The EIS also will include an analysis of the no-action alternative, as required under NEPA. Under the no-action alternative, DOE would not provide partial funding for the design, construction, and operation of the project. In the absence of DOE funding, the Kentucky Pioneer IGCC Demonstration Project probably would not be constructed. If the proposed Kentucky Pioneer IGCC Demonstration Project were not built, EKPC may use alternative, less efficient sources for electric power to meet future demands of its customers. Alternatives to the proposed project could include purchasing power from other sources, adding generation capacity that does not rely on the IGCC technology, or using

some other current technology. DOE will consider other reasonable alternatives that may be suggested during the public scoping period.

Because of DOE's limited role of providing cost-shared funding for the proposed Kentucky Pioneer IGCC Demonstration Project, and because of advantages associated with the proposed location, DOE does not plan to evaluate alternative sites for the proposed project. Site selection was governed primarily by benefits that EKPC could realize. EKPC preferred the proposed project site because the costs would be much higher and the environmental impacts would likely be greater for an undisturbed area.

Under the proposed action, project activities would include engineering and design, permitting, fabrication and construction, testing, and demonstration of the technology. DOE plans to complete the EIS and issue a Record of Decision within 15 months of publication of this Notice of Intent, assuming timely delivery of information from Kentucky Pioneer Energy, L.L.C. that DOE needs for preparing the EIS. Upon completion of the demonstration, the facility could continue commercial operation.

#### **Preliminary Identification of Environmental Issues**

The following issues have been tentatively identified for analysis in the EIS. This list, which was developed on the basis of analyses of similar projects and from agency concerns, and is presented to facilitate public comment on the scope of the EIS, is neither intended to be all-inclusive nor a predetermined set of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

The issues include:

(1) Atmospheric resources: Potential air quality impacts resulting from emissions during construction and operation of the Kentucky Pioneer IGCC Demonstration Project and the briquette manufacturing plant;

(2) Water resources: Potential effects on surface and groundwater resources and withdrawal of water from the Kentucky River;

(3) Infrastructure and land use, including potential effects resulting from the manufacture, transportation, and storage of the briquettes required for the proposed project;

(4) Solid waste: Pollution prevention and waste management practices, including impacts caused by waste generation and treatment at the proposed project and briquette manufacturing plant;

(5) Noise: Potential impacts resulting from construction, transportation of materials, and plant operation for the proposed project and briquette manufacturing plant;

(6) Construction: Impacts associated with traffic patterns and construction related emissions;

(7) Floodplains: Impacts associated with extension of a water intake structure in the Kentucky River;

(8) Community impacts, including impacts from local traffic patterns, socioeconomic impacts on public services and infrastructure, and environmental justice (Executive Order 12898) with respect to the surrounding community;

(9) Cumulative effects that result from the incremental impacts of the proposed project when added to the other past, present, and reasonably foreseeable future actions; and,

(10) Visual impacts associated with plant structures.

#### **Public Scoping Process**

To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will run until May 31, 2000. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and the alternatives that should be analyzed. Scoping comments should describe specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues. Written, e-mailed, or faxed comments should be communicated by May 31, 2000 (see **ADDRESSES**).

DOE will conduct a public scoping meeting at Trapp Elementary School in Trapp, Kentucky on May 4, 2000, at 7 p.m. The address of Trapp Elementary School is 11400 Irvine Road, Highway 89 South, Winchester, Kentucky 40391. In addition, the public is invited to an informal session at this location beginning at 4 p.m. to learn more about the proposed action. Displays and other information about the proposed agency action and location will be available, and DOE personnel will be present to answer questions.

The formal scoping meeting will begin on May 4, 2000, at 7 p.m. DOE asks people who wish to speak at this public scoping meeting to contact Mr. Roy Spears, either by phone, fax, computer, or in writing (see **ADDRESSES** in this Notice). People who do not arrange in advance to speak may register at the meeting (preferably at the beginning of the meeting) and may

speak after previously scheduled speakers. Speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five minutes initially, and provide additional opportunities as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with an overview of the proposed Kentucky Pioneer IGCC Demonstration Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands their comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 10th day of April, 2000.

**David Michaels,**

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 00-9301 Filed 4-13-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Notice of Availability of Solicitation

**AGENCY:** Idaho Operations Office, Department of Energy.

**ACTION:** Notice of availability of solicitation—enhanced geothermal systems project development.

**SUMMARY:** The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications for projects to verify the electrical power generating potential of enhanced geothermal systems (EGS). Concept definition studies will comprise Phase One of this solicitation. Up to ten financial assistance awards, valued at a maximum of \$200,000 each, will be made for Phase One. The period of performance for Phase One is anticipated to be four months. Upon evaluation of the results from Phase One, the DOE will select the most promising projects for field validation. Validation will comprise Phase Two of the solicitation.

**DATES:** The deadline for receipt of applications is 3 p.m. MDT May 24, 2000.

**ADDRESSES:** Applications should be submitted to: Procurement Services Division, U. S. Department of Energy,

Idaho Operations Office, Attention: Elizabeth Dahl [DE-PS07-00ID13913], 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401-1563.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Dahl, Contract Specialist, at [dahlee@id.doe.gov](mailto:dahlee@id.doe.gov).

**SUPPLEMENTARY INFORMATION:** The statutory authority for this program is the Geothermal Energy Research, Development and Demonstration Act of 1974 (Pub.L. 93-410). The issuance date of Solicitation No. DE-PS07-00ID13913 is on or about April 14, 2000. The solicitation is available in full text via the Internet at the following address: <http://www.id.doe.gov/doiid/psd/proc-div.html>. Technical and non-technical questions should be submitted in writing to Elizabeth Dahl by e-mail [dahlee@id.doe.gov](mailto:dahlee@id.doe.gov), or facsimile at 208-526-5548 no later than April 21, 2000.

Issued in Idaho Falls on April 7, 2000.

**Michael L. Adams,**

*Acting Director, Procurement Services Division.*

[FR Doc. 00-9300 Filed 4-13-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Office of Fossil Energy, National Coal Council; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

**DATED:** Wednesday, May 3, 2000, 9:00 am to 12 noon.

**ADDRESS:** Westin Fairfax Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586-3867.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice, information, recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.  
*Tentative Agenda:*

- Call to order E. Linn Draper, Jr., Chairman
- Remarks by Secretary of Energy, Bill Richardson (invited)
- Remarks by Ms. Kathy Karpen, Office of Surface Mining
- Remarks by Mr. John Neumann, Edison Electric Institute

- Administrative business
- Report by James K. Martin, Chairman of Council Study Working Group, on Progress of Council's Current Study on Carbon Sequestration
- Other business
- Adjournment

### Public Participation

The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10-minute rule.

### Transcripts

The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 11, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-9367 Filed 4-13-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces an open meeting of the Secretary of Energy Advisory Board's Task Force on the Department of Energy's Nonproliferation Programs in Russia. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the meeting is to discuss the Task Force's review of the Department of Energy's nonproliferation programs in Russia.

**NAME:** Secretary of Energy Advisory Board—Task Force on the Department of Energy's Nonproliferation Programs in Russia.

**DATES:** Tuesday, April 25, 2000, 9 AM–4 PM, Eastern Daylight Time.

**ADDRESSES:** U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Note: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the meeting. Public participation is welcomed.

**FOR FURTHER INFORMATION CONTACT:**

Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the Task Force on the Department of Energy's Nonproliferation Programs in Russia is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the policy priorities established by the Department of Energy to pursue nonproliferation and nuclear safety programs in the Russian Federation. Special emphasis will be placed on program areas that may not have been addressed in the past. The Task Force will focus on assessing the performance of DOE's programs in achieving national security and nonproliferation missions, as well as providing policy recommendations on how the Department can be most effective in supporting U.S. national security interests. The Task Force will investigate, but will not be limited to, the following programs: (1) Initiatives for Nonproliferation, (2) Nuclear Cities Initiative, (3) Material Protection Control and Accounting Program, (4) Second Line of Defense Program, (5) Highly Enriched Uranium (HEU) Purchase Agreement, (6) Plutonium Disposition Program, and (7) International Nuclear Safety Program.

**Tentative Agenda**

*Tuesday, April 25, 2000*

9 AM–9:15 AM Opening Remarks  
 9:15 AM–10 AM Briefing on DOE Moscow/DOE Presence in Russia  
 10 AM–10:45 AM Briefing on the Expanded Threat Reduction Initiative  
 10:45 AM–11 AM Break  
 11 AM–12 AM Briefing on Budget Issues  
 12 PM–1:15 PM Lunch  
 1:15 PM–3:45 PM Roundtable with NGO Representatives

3:45 PM–4 PM Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

**Public Participation**

In keeping with procedures, members of the public are welcome to observe the business of the Task Force on the Department of Energy's Nonproliferation Programs in Russia and submit written comments or comment during the scheduled public comment period. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open meeting, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign in at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

**Minutes**

A copy of the minutes and a transcript of the open meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 A.M. and 4 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at <http://www.hr.doe.gov/seab>.

Issued at Washington, DC, on April 11, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–9365 Filed 4–13–00; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY**

**Secretary of Energy Advisory Board; Notice of Open Meeting**

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces a meeting of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force. The Federal Advisory Committee Act (Pub.

L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board—National Ignition Facility Laser System Task Force.

**DATES:** Wednesday, April 26, 2000, 8:30 AM–3 PM.

**ADDRESSES:** Lawrence Livermore National Laboratory (LLNL), Conference Room A, Building 123, 7000 East Avenue, Livermore, California 94551–0808. Note: For their convenience, members of the public who plan to attend this open meeting are requested to contact Ms. Kathleen Moody of the LLNL Protocol Office in advance of the meeting in order to facilitate access to the meeting site. Ms. Moody may be reached at (925) 423–5948 or via e-mail at [moody2@llnl.gov](mailto:moody2@llnl.gov).

**FOR FURTHER INFORMATION CONTACT:**

Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the NIF Task Force is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Task Force will focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system. The Task Force's review will cover the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The review will also address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology.

**Tentative Agenda**

The agenda for the April 26 meeting has not been finalized, however the topics to be addressed will include the following:

–Response to the Findings and Recommendations of the Interim Report of the National Ignition Facility Laser System Task Force, January 10, 2000—

A discussion of the Department of Energy's response to the key findings and recommendations of the Task Force's Interim Report.

-NIF Rebaseline Plan—A discussion of the key milestones, basis and current status of the NIF Rebaseline Plan, February 2000 (NIF-0038376-0B.3)

-Criteria, Guidelines and Options Used as the Basis for the NIF Total Project Cost Estimate—A discussion of the key criteria, assumptions, and guidance used in the development of the NIF Project Cost Estimate, Schedule and options.

#### *Tentative Agenda 8*

- 8:30–9 a.m.—Opening Remarks, Introductions & Objectives—Dr. John McTague, Task Force Chairman
- 9–10 a.m.—Briefing & Discussion: NIF Project Response to the Interim Report Findings and Recommendations  
—DOE  
—University of California  
—Lawrence Livermore National Laboratory
- 10–10 a.m.—Briefing & Discussion: NIF Rebaseline Plan, Implementation and Status
- 10:20–10:35 a.m.—Break
- 10:35–12:30 p.m.—Briefing & Discussion: NIF Cost Estimation and Scheduling Systems for the NIF Rebaseline
- 12:30–1:30 p.m.—Lunch
- 1:30–2:30 p.m.—Briefing & Discussion: NIF Progress Since the December Meeting  
—Overview  
—Optics  
—Construction & Beampath Infrastructure
- 2:30–3 p.m.—Public Comment Period
- 3 p.m.—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

#### **Public Participation**

In keeping with procedures, members of the public are welcome to observe the business of the NIF Task Force and submit written comments or comment during the scheduled public comment periods. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may

submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB-1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

#### **Minutes**

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at <http://www.hr.doe.gov/seab>.

Issued at Washington, D.C., on April 11, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-9366 Filed 4-13-00; 8:45 am]

**BILLING CODE 6450-01-P**

## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

**[Docket Nos. ER00-1030-000 and EL00-33-000; ER00-1463-000; ER00-1502-000, ER00-1259-000 and EL00-38-000; ER00-1517-000; and ER00-1598-000 (Not Consolidated)]**

### **AmerGen Vermont, LLC; Orion Power MidWest, LLC; Bonnie Mine Energy, L.L.C. and Louisiana Generating LLC; San Joaquin Cogen Limited; Baltimore Gas and Electric Company, Calvert Cliffs, Inc., Constellation Generation, Inc. and Constellation Power Source, Inc.; Notice of Issuance of Order**

April 10, 2000.

AmerGen Vermont, LLC, Orion Power MidWest, LLC, Bonnie Mine Energy, LLC and Louisiana Generating LLC, San Joaquin Cogen Limited, and Baltimore Gas and Electric Company, Calvert Cliffs, Inc., Constellation Generation, Inc. and Constellation Power Source, Inc. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In

particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On March 29, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's March 29, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.\* \* \*

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. This issuance 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. 00-9310 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP99-301-003]****ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff**

April 10, 2000.

Take notice that on April 3, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 2000:

Seventh Revised Sheet No. 14  
Original Sheet Nos. 14A through 14M  
Sixth Revised Sheet No. 15

ANR is filing the attached tariff sheets to reflect the implementation of a restructured service portfolio for Wisconsin Public Service Corporation (WPSC) for service under Rate Schedules ETS, FTS-1, FSS, NNS and GF-1. Generally, WPSC's new contracts will be effective April 1, 2000 and terminate in 2009 or 2010. Under the restructured portfolio, WPSC's rate components may be adjusted as a result of surcharges placed in effect after November 5, 1999, and entitlements can be reduced or increased. ANR requests that the Commission grant ANR any waivers of the Commission's regulations which are necessary in order to make these tariff sheets effective as of April 1, 2000, and to the extent necessary, moves pursuant to 18 CFR 154.7(a)(9) for the tariff sheets to go into effect on said date. Additionally, ANR requests all such further relief as is appropriate.

ANR states that a copy of this filing is being mailed to the affected shipper and to each ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/>

rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9319 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M****DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. EL98-77-000]****Edison Sault Electric Company v. Cloverland Electric Cooperative; Notice of Filing**

April 10, 2000.

Take notice that on May 4, 1999, Edison Sault Electric Company submitted an Offer of Settlement that resolves all issues in the above-referenced docket pursuant to Rule 602 of the rules of practice and procedure of the Federal Energy Regulatory Commission (18 CFR 385.602).

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 and protests should be filed on or before April 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9315 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M****DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. ER00-1966-001]****Edison Sault Electric Company; Notice of Filing**

April 10, 2000.

Take notice that on March 31, 2000, Edison Sault Electric Company (Edison

Sault) filed a fully executed Amendment No. 1 to Supplemental Agreement No. 8 to the Contract for Electric Service between Edison Sault and Cloverland Electric Cooperative, Inc. (Cloverland) dated April 9, 1999.

Copies of the filing were served upon Cloverland.

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 and protests should be filed on or before April 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9317 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M****DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. ER00-1983-000]****Florida Power Corporation; Notice of Filing**

April 10, 2000.

Take notice that on March 28, 2000, Florida Power Corporation (Florida Power) filed amendments to its all Requirements Service Agreement dated September 4, 1990 for all requirements service to the City of Mount Dora, Florida (Mount Dora). That agreement is on file with the Commission as FPC FERC Rate Schedule No. 127. Florida Power states that the filing qualifies as an abbreviated rate filing pursuant to Section 35.13(a)(2)(iii) of the Commission's regulations because the amendments to the agreement are rate schedule changes other than rate increases.

Florida Power requests that the filing become effective on April 1, 2000.

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 and protests should be filed on or before April 18, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9318 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-1519-000]

#### InPower Marketing Corporation; Notice of Issuance of Order

April 10, 2000.

InPower Marketing Corporation (InPower) filed with the Commission a rate schedule that would permit entities (Independent Power Producers, hereafter "IPPs") that own generation to meet their own on-site demands or for back-up purposes to sell power at market-based rates to InPower.<sup>1</sup> InPower's filing, on behalf of yet-to-be-identified IPPs, requested certain waivers and authorizations. In particular, InPower requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by eligible IPPs. On March 30, 2000, the Commission issued an Order Accepting For Filing Proposed Market-Based Rate Schedule And Granting Waivers (Order), in the above-docketed proceeding.

The Commission's March 30, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by eligible IPPs 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.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, eligible IPPs are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of IPPs compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of eligible IPPs' issuances of securities or assumptions of liabilities. \* \* \*

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 1, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order 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. 00-9312 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-167-000]

#### Koch Gateway Pipeline Company; Notice of Application

April 10, 2000.

Take notice that on April 3, 2000, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77521-1478, pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's Regulations filed in Docket No. CP00-167-000, an abbreviated application for an order permitting and approving the

abandonment of individually certified transportation service agreements on file with the Commission as described herein.

These individually certified services are no longer required by Natural Gas Pipeline Company of America (Natural) and have been terminated by mutual agreement between Koch Gateway and Natural. Koch Gateway states this abandonment of service is in the public interest and will have no effect on any existing customer, all as more fully set forth in the abbreviated application which is on file with the Commission and open for public inspection. A contact person for this filing is Kyle Stephens, Director of Certificates, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas, 77251-1478.

Any persons desiring to participate in the hearing process or to make any protest with reference to said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedures (18 CFR 385.214, 385.211). All such petitions or protests should be filed on or before April 25, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants Applicants at the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

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 on this application if no protest or 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 protest or 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 procedures herein provided for, unless otherwise advised, it will be

<sup>1</sup> On October 12, 1999, in Docket No. ER99-3964-000, InPower was authorized to sell power under market-based rates (unpublished letter order issued by the Director of the Division of Rate Applications, Office of Electric Power Regulation).

unnecessary for Koch Gateway to appear or to be represented at the hearing.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9307 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-1781-000]

#### Marquette Energy, L.L.C.; Notice of Issuance of Order

April 10, 2000.

Marquette Energy, L.L.C. (Marquette Energy) submitted for filing a rate schedule under which Marquette Energy will engage in wholesale electric power and energy transactions as a marketer. Marquette Energy also requested waiver of various Commission regulations. In particular, Marquette Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Marquette Energy.

On March 29, 1999, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Marquette Energy 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 Procedures (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Marquette Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Marquette Energy's

issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order 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. 00-9311 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP93-5-039 and RP93-96-017]

#### Northwest Pipeline Corporation; Notice of Compliance Filing

April 10, 2000.

Take notice that on April 3, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing a group of revised tariff sheets, workpapers and other materials applicable to the period from April 1, 1993 through October 31, 1994 during which Northwest's rates as established in Docket Nos. RP93-5 and RP93-96 were applicable.

Northwest states that the purpose of this filing is to comply with the Commission's February 11, 2000 Order Rejecting Compliance Filing in Docket Nos. RP93-5-034 and RP93-96-013. Northwest states that it has submitted (1) revised rates and surcharges based on the 6.08 percent long-term growth projection as established by settlement of the parties and the median return on equity, (2) its proposal regarding the effective data of the related surcharges, (3) detailed workpapers reflecting the calculation of its income tax adjustments and (4) revised tariff sheets that set forth the appropriate surcharges. Northwest states that a copy of this filing has been served upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 17, 2000.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9304 Filed 4-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP93-5-038 and RP93-96-016]

#### Northwest Pipeline Corporation; Notice of Preliminary Surcharge Report

April 10, 2000.

Take notice that on April 3, 2000, Northwest Pipeline Corporation (Northwest) filed a Preliminary Surcharge Report (PSR) in connection with the Commission's order issued on February 11, 2000, in its Docket Nos. RP93-5 and RP93-96 general rate proceeding. Northwest states that the PSR covers the period from April 1, 1993, through October 31, 1994. Northwest further states that it has asked the Commission to accept the PSR as illustrative of final surcharges in the above mentioned dockets. Northwest anticipates filing a final surcharge report 30 days after the final payment is due under the surcharge plan options described in Northwest's April 3, 2000 Compliance Filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm>

[www.ferc.fed.us/online./rims.htm](http://www.ferc.fed.us/online./rims.htm) (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9305 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-1512-001]

#### Old Dominion Electric Cooperative; Notice of Filing

April 10, 2000.

Take notice that on March 29, 2000, Old Dominion Electric Cooperative (Applicant) filed Supplemental Information in Support of Application Submitting Service Agreement and Request for Waivers, supporting the previously-filed Service Agreement between the Applicant and Northern Virginia Electric Cooperative for a new service to a single customer at a single delivery point pursuant to the Applicant's previously granted authority to make sales at market-based rates.

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 and protests should be filed on or before April 19, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9316 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-375-010]

#### Wyoming Interstate Company, Ltd.; Notice of Filing of Refund Report

April 10, 2000.

Take notice that on April 4, 2000, Wyoming Interstate Company, Ltd. (WIC) tendered for filing a refund report in Docket No. RP97-365-009.

WIC states that the filing and refunds were made to comply with the Commission's Order of December 21, 1999. WIC also states the amounts were paid by WIC on February 4, 2000.

WIC further states that the refund report summarizes transportation refund amounts for the period December 1, 1997 through November 30, 1999 pursuant to Article VIII of WIC's Stipulation and Agreement as approved in the Commission's December 21, 1999 Order.

WIC states that copies of WIC's filing are being mailed to all holders of the tariff and to public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9309 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL00-65-000]

#### Connecticut Municipal Electric Energy Cooperative v. Connecticut Yankee Atomic Power Company and Connecticut Light and Power Company; Notice of Complaint

April 10, 2000.

Take notice that on April 7, 2000, the Connecticut Municipal Electric Energy Cooperative (CMEEC) filed a complaint against Connecticut Yankee Atomic Power Company (CY) and Connecticut Light & Power Company (CL&P). The complaint asserts that CY operated its nuclear generating plant imprudently before prematurely retiring it in December 1996, and that CY and CL&P have charged CMEEC through their formula rates approximately \$2.2 million (from 1995 through 1998) for costs attributable to CY's imprudence or improper formula-rate collections of decommissioning costs. The Complaint requests that the Commission summarily find CY imprudent or, in the alternative, find that CMEEC has made a prima facie showing of imprudence and require CY to show affirmatively that it was prudent. The Complaint further requests that the Commission begin an investigation to identify the costs that CY and CL&P have improperly charged CMEEC through their formula rates and order them to refund such amounts.

Any person desiring to be heard or to protest this 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 must be filed on or before April 27, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222) for assistance. Answers

to the complaint shall also be due on or before April 27, 2000.

David P. Boergers,  
Secretary.

[FR Doc. 00-9314 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL00-64-000]

#### Rochester Gas and Electric Corporation, Complainant v. New York Independent System Operator, Respondent; Notice of Filing

April 10, 2000.

Take notice that on April 7, 2000, Rochester Gas and Electric Corporation submitted a Complaint pursuant to Section 206 of the Federal Power Act against the New York Independent System Operator (NYISO). The Complainant seeks to correct the NYISO tariff and market implementation flaws associated with Operating Reserves, to compel the NYISO to use Temporary Extraordinary Procedures and to consolidate this Complaint with the proceedings in Docket Nos. EL00-63-000, EL00-57-000 and ER00-1969-000.

Copies of the filing were served upon the NYISO and other interested parties.

Any person desiring to be heard or to protest this 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 must be filed on or before April 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222) for assistance. Answers to the complaint shall also be due on or before April 20, 2000.

David P. Boergers,  
Secretary.

[FR Doc. 00-9313 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC98-40-003, et al.]

#### American Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 6, 2000.

Take notice that the following filings have been made with the Commission:

##### 1. American Electric Power Company and Central and South West Corporation

[Docket Nos. EC98-40-003, and ER98-2770-003 and ER98-2786-004]

Take notice that on March 31, 2000, American Electric Power Company and Central and South West Corporation made their compliance filing as required under Ordering Paragraph (B) of the Commission's March 15, 2000 order in the referenced dockets.

Copies of the filing were served on all parties to the proceeding.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 2. American Electric Power Company and Central and South West Corporation

[Docket Nos. EC98-40-004, ER98-2770-004 and ER98-2786-005]

Take notice that on March 31, 2000, American Electric Power Company and Central and South West Corporation filed a description of the means by which they will implement the interim energy sales discussed at pages 27-28 of the Commission's March 15, 2000 order issued in the referenced dockets.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 3. Delmarva Power & Light Company and Conectiv Delmarva Generation, Inc.

[Docket No. EC00-69-000]

Take notice that on March 31, 2000, Delmarva Power & Light Company (Delmarva) and Conectiv Delmarva Generation, Inc. (CDG) (collectively, the Applicants) submitted a joint application under Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations to request authorization and approval for Delmarva to transfer to CDG certain jurisdictional transmission facilities related to the Keystone and Conemaugh generating plants, which will also be transferred to CDG. The Applicants' proposed closing date for the transfer is June 1, 2000. The Applicants request

approval of the transfer during May 2000.

The Applicants state that copies of this joint application have been served upon Delmarva's wholesale requirements customers, the transmission dependent utilities with whom Delmarva has interconnection agreements, and the state regulatory commissions of Delaware, Maryland, Pennsylvania and Virginia and on the Pennsylvania-New Jersey-Maryland Interconnection, LLC.

*Comment date:* May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 4. Interstate Power Company and IES Utilities Inc.

[Docket No. EC00-70-000]

Take notice that on March 31, 2000, Interstate Power Company (IPC) and IES Utilities Inc. (IES) tendered for filing an Application for Authorization and Approval of Merger. Filing requirements were submitted pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Rules and Regulations.

Under the terms of the Merger Agreement between IPC and IES, IPC will be merged into IES and the surviving corporation will be renamed upon the consummation of the merger. Both Applicants are wholly-owned subsidiaries of Alliant Energy Corporation. At the time of merger, all of the shares of common stock of IPC, wholly-owned by Alliant Energy, will be fully redeemed and retired.

The Applicants submit that the merger of IPC and IES would be consistent with the public interest as required by Section 203 of the Federal Power Act. Applicants therefore request that the Commission authorize the merger without the necessity of hearing.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 5. Rio de Este Barge Power LLC

[Docket No. EG00-123-000]

Take notice that on March 31, 2000, Rio de Este Barge Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a barge-mounted generating facility that will be located initially on the East River in New York City

(Facility) and selling electric energy at wholesale.

*Comment date:* April 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

## 6. Florida Power Corporation

[Docket No. ER00-1983-000]

Take notice that on March 28, 2000, Florida Power Corporation (Florida Power) filed amendments to its All Requirements Service Agreement dated September 4, 1990 for all requirements service to the City of Mount Dora, Florida (Mount Dora). That agreement is on file with the Commission as Florida Power FERC Rate Schedule No. 127. Florida Power states that the filing qualifies as an abbreviated rate filing pursuant to Section 35.129a0(2)(iii) of the Commission's regulations because the amendments to the agreement are rate schedule changes other than rate increases.

Florida Power requests the filing to become effective on April 1, 2000.

*Comment date:* April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 7. New England Power Pool

[Docket No. ER00-2060-000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a request for termination of membership in NEPOOL, with an effective date of April 1, 2000, of Avista Energy, Inc. (Avista). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended (the NEPOOL Agreement), and previously signed by Avista. The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that termination of Avista with an effective date of April 1, 2000 would relieve Avista, at its request, of the obligations and responsibilities of NEPOOL membership and would not change the NEPOOL Agreement in any manner, other than to remove Avista from membership in NEPOOL.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 8. Central Maine Power Company

[Docket No. ER00-2063-000]

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.

## 9. Illinois Power Company

[Docket No. ER00-2066-000]

Take notice that, on March 31, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement under which Illinois Power Company—Power Purchase Option will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on the forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of December 9, 1999.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 10. Boston Edison Company

[Docket No. ER00-2067-000]

Take notice that on March 31, 2000, Boston Edison Company (BECO) tendered for filing an unexecuted Related Facilities Agreement between BECO and ANP Bellingham Energy Company (ANP). BECO states that the Related Facilities Agreement is being filed in unexecuted form at the request of ANP due to disagreement between the parties on cost responsibility for construction outage related costs.

BECO has requested an effective date upon the later to occur May 29, 2000.

BECO states that it has served a copy of the filing on ANP and the Massachusetts Department of Telecommunications and Energy.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 11. Ameren Services Company

[Docket No. ER00-2068-000]

Take notice that on March 31, 2000, Ameren Services Company (Ameren) tendered for filing an unexecuted Network Integration Transmission Service Agreement and associated Network Operating Agreement, between Ameren and Wayne-White Counties Electric Cooperative, Inc. (Wayne-

White). Ameren asserts that the purpose of the agreements is to permit Ameren to provide network service over its transmission and distribution facilities to Wayne-White under the Ameren Open Access Tariff.

Ameren seeks an effective date of March 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 12. Indeck-Rockford, L.L.C.

[Docket No. ER00-2069-000]

Take notice that on March 31, 2000, Indeck-Rockford, L.L.C. submitted for filing, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, an application for authorization to make sales of electric energy and capacity at market-based rates, and for related waivers and blanket authorizations.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 13. Rio de Este Barge Power LLC

[Docket No. ER00-2070-000]

Take notice that on March 31, 2000, Rio de Este Barge Power LLC (Seller), a limited liability corporation organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect subsidiary of Northern States Power Company that intends to own and operate a generating facility on a barge on the East River in New York City.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

## 14. Lakefield Junction, L.P.

[Docket No. ER00-2071-000]

Take notice that on March 31, 2000, Lakefield Junction, L.P. (Seller), a limited partnership organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates, and (4) granting

expedited consideration. Seller is an affiliate of Northern States Power Company and Tenaska, Inc.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 15. Wisconsin Public Service Corporation

[Docket No. ER00-2072-000]

Take notice that on March 31, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Service Agreement with Allegheny Energy Supply Company, LLC, providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be made effective on March 24, 2000.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 16. Wisconsin Public Service Corporation

[Docket No. ER00-2073-000]

Take notice that on March 31, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Service Agreement with Allegheny Energy Supply Company, LLC, providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be made effective on March 24, 2000.

*Comment date:* April 21, 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](http://www.ferc.fed.us/online/rims.htm) (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9303 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-P

### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Project No. 2651-006, Indiana]

#### Indiana Michigan Power Company; Notice of Availability of Draft Environmental Assessment

April 10, 2000.

In accordance with the National Environmental Policy Act of 1969, and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Elkhart Hydroelectric Project, and has prepared a Draft Environmental Assessment (Draft EA). The project is located on the St. Joseph River in the City of Elkhart, in Elkhart County, Indiana. No federal lands or facilities are occupied or used by the project. The Draft EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the Draft EA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact Nicholas Jayjack, Team Leader, at (202) 219-2825.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9306 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-M

### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Docket No. CP00-104-000]

#### Distrigas of Massachusetts Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Domac Vapor Recovery Project and Request for Comments on Environmental Issues

April 10, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of vapor recovery facilities proposed by Distrigas of Massachusetts Company (DOMAC) in Everett, Massachusetts.<sup>1</sup> These facilities would recover natural gas vapor vented to the atmosphere during liquefied natural gas (LNG) cargo transfer operations. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

#### Summary of the Proposed Project

DOMAC states that its existing vapor handling system adequately recovers the natural gas vapor that results from LNG storage. However, during cargo transfer, additional vapor is produced, causing approximately 18,000-23,000 thousand standard cubic feet (Mscf) of each LNG cargo to be vented to the atmosphere in order to maintain design pressure in the LNG tanks. DOMAC seeks to recover this additional vapor (approximately 830,000 Mscf per year) by installing vapor recovery facilities consisting of a turboexpander-driven compressor, a hot water pump and heat exchanger, and associated meters and interconnecting piping.

Construction of the proposed facilities would occur completely on DOMAC's existing 35-acre LNG plant site. The general location of the project facilities is shown on figure 1.<sup>2</sup>

<sup>1</sup> DOMAC's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

<sup>2</sup> The figures and appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208-1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the figures and appendices were sent to all those receiving this notice in the mail.

## The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

## Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention

based on a preliminary review of the proposed facilities and the environmental information provided by DOMAC. This preliminary list of issues may be changed based on your comments and our analysis.

- Noise quality may be affected by the addition of the turboexpander-driven compressor.
- Soils (possibly contaminated) may be affected by minor ground disturbance during construction. The proposed project area is part of a site that has been identified as a "notice site" pursuant to the Massachusetts Contingency Plan. The former site owner, Boston Gas Company, is currently conducting environmental investigations to determine the need for soil remediation.

## Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 1.
- Reference Docket No. CP00-104-000.
- Mail your comments so that they will be received in Washington, DC on or before May 10, 2000.

## Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.214) (see appendix 1). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208-1088 or on the FERC website ([www.ferc.fed.us](http://www.ferc.fed.us)) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, to select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9308 Filed 4-13-00; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6253-2]

### Environmental Impact Statements; Notice of Availability Responsible Agency

Office of Federal Activities, General Information (202) 564-7167 or [www.epa.gov/oeca/ofa](http://www.epa.gov/oeca/ofa).  
Weekly receipt of Environmental Impact Statements  
Filed April 03, 2000 Through April 07, 2000  
Pursuant to 40 CFR 1506.9.

*EIS No. 000095, FINAL EIS, AFS, MT,*  
Good Creek Resource Management Project, Implementation, Vegetation Treatments and Other Activities to Restore Watershed, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT, Due: May 15, 2000, Contact: Bryan Donner (406) 863-5408.

- EIS No. 000096, DRAFT EIS, AFS, ID*, East Slate Project, Harvesting Timber, Implementation, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID, Due: May 30, 2000, Contact: Pete Ratcliffe (208) 245-6071.
- EIS No. 000097, DRAFT EIS, IBW, El Paso*—Las Cruces Regional Sustainable Water Project, To Secure Future Drinking Water Supplies, United States and New Mexico, Due: June 13, 2000, Contact: Douglas Echlin (915) 832-4741.
- EIS No. 000098, DRAFT EIS, BIA, WA*, Colville Indian Reservation Integrated Resource Management Plan, Implementation, Colville Indian Reservation, Okanogan and Ferry Counties, WA, Due: May 30, 2000, Contact: William Nicholson (509) 634-2316.
- EIS No. 000099, FINAL EIS, BIA, AZ*, NM, Programmatic EIS—Navajo Ten Year Forest Management Plan Alternatives, Implementation and Funding, AZ and NM, Due: May 15, 2000, Contact: Harold D. Russell (520) 729-7228.
- EIS No. 000100, FINAL SUPPLEMENT, UAF, FL, CA*, Evolved Expendable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA, Due: May 15, 2000, Contact: Jonathan D. Farthing (210) 536-3668.
- EIS No. 000101, DRAFT EIS, FAA, NC*, Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility, and Associated Developments, Funding, NPDES and COE Section 404 Permit, city of Greensboro, Guilford County, NC, Due: May 30, 2000, Contact: Donna M. Meyer (404) 305-7150.
- EIS No. 000102, DRAFT SUPPLEMENT, COE, FL*, Central and Southern Florida Project for Flood Control and Other Purposes, Everglades National Park Modified Water Deliveries, New Information concerning Flood Mitigation to the 8.5 Square Mile Area (SMA), Implementation, South Miami, Dade County, FL, Due: May 30, 2000, Contact: Elmar Kurzbach (904) 232-2325.
- EIS No. 000103, DRAFT EIS, TVA, MS*, Union County Multipurpose Reservoir/Other Water Supply Alternatives Project, To Provide an Adequate and Reliable Water Supply, COE Section 404 Permit and NPDES Permit, city of New Alban, Union County, MS, Due: May 30, 2000, Contact: Gary Hickman (865) 632-1791.
- EIS No. 000104, FINAL EIS, FHW, NY*, Stewart Airport Access Transportation Improvement Project, A New Interchange on I-84 at Drury Lane, Reconstruction of Drury Lane and a new East-West Connector Road from Drury Lane to Stewart International Airport, Funding, Towns of Montgomery, Newburgh and New Windsor, Orange County, NY, Due: May 15, 2000, Contact: Harold J. Brown (518) 431-4127.
- EIS No. 000105, DRAFT EIS, NPS, CA*, Yosemite Valley Plan, A Comprehensive Look of at Four Areas of Concern: Resource Preservation and Restoration, Visitor Enjoyment, Transportation, and Employee Housing, from Happy Isles to El Portal Road/Big Oak Flat Road, Merced River, several counties, CA, Due: July 14, 2000, Contact: Alan Schmierer (209) 372-0261.
- EIS No. 000106, DRAFT EIS, NPS*, Shenandoah Valley Battlefields National Historic District Management Plan, Implementation, Augusta, Clarks, Frederick, Highland, Page, Rockingham, Shenandoah and Warren Counties, VA, Due: June 14, 2000, Contact: Jeffrey P. Reinbold (540) 740-4549.
- EIS No. 000107, FINAL EIS, DOE, SC*, Savannah River Site Spent Nuclear Fuel Management Plan, Implementation, Aiken County, SC, Due: May 15, 2000, Contact: Andrew R. Grainger (803) 725-1523.
- Amended Notices**
- EIS No. 000033, DRAFT EIS, AFS, WA*, Deadman Creek Ecosystem Management Projects, Implementation, Kettle Falls Ranger District, Colville National Forest, Ferry County, WA, Due: April 28, 2000, Contact: Wade Spang (509) 738-6111. Published FR on 2-11-2000: CEQ Comment Date has been extended from 03/30/2000 to 04/28/2000.
- EIS No. 000040, DRAFT EIS, AFS, OR*, Mt. Ashland Ski Area Expansion, Implementation, Ashland Ranger District, Rogue River National Forest and Scott River Ranger District, Klamath National Forest, Jackson County, OR, Due: May 04, 2000, Contact: Linda Duffy (541) 482-3333. Published FR on 2-18-2000: CEQ Comment Date has been extended from 04/03/2000 to 05/04/2000.
- EIS No. 000087, DRAFT EIS, AFS, ID*, Idaho Panhandle National Forests, Small Sales, Harvesting Dead and Damaged Timber, Coeur d'Alene River Range District, Kootenai and Shoshone Rehnberg (208) 664-2318. Published FR-4-07-00—Correction to Comment Period from 5-15-2000 to 5-22-2000.
- EIS No. 000088, DRAFT EIS, AFS, PA*, Duck and Sheriff Project Area (DSPA), Timber Management, Road Construction and Reconstruction, Trail Maintenance, Wildlife Habitat Improvement, and Recreation Management, Allegheny National Forest, Bradford Ranger District, Cherry Grove Township of Warren County, and Howe Township of Forest County, PA, Due: May 22, 2000, Contact: John Schultz (814) 362-4613. Published FR-04-07-00 Correction to Comment Period from 5-15-2000 to 5-22-2000.
- EIS No. 000089, DRAFT EIS, AFS, ID*, Warm Springs Ridge Vegetation Management Project, Improve Forest Conditions, Boise National Forest, Cascade Resource Area, Boise County, ID, Due: May 22, 2000, Contact: Kathy Ramirez (208) 392-6681. Published FR-04-07-00 Correction to Comment Period from 05-15-2000 to 5-22-2000.
- EIS No. 000090, FINAL EIS, FAA, MA*, Provincetown Municipal Airport Safety and Operational Enhancement Project, Improvements (1) Firefighter Equipment Garage; (2) General Aviation Parking Apron Expansion; (3) Runaway Safety Areas, and (4) a Runaway Extension, COE Section 404 Permit, Cape Cod National Seashore, Barnstable County, MA, Due: May 08, 2000, Contact: Frank Smigelski (781) 238-7618. Published—FR 04-07-00—Correction to Comment Period from 5-01-2000 to 5-8-2000.
- EIS No. 000092, FINAL EIS, FTA, CA*, Vasona Corridor Light Rail Transit Project, Extension of existing Light Rail Transit (LRT), in portion of the Cities of San Jose, Campbell and Los Gatos, Santa Clara County, CA, Due: May 08, 2000, Contact: Jerome Wiggins (415) 744-3115. Published FR-04-07-00 Correction to Comment Period from 5-1-2000 to 5-8-2000.
- EIS No. 000093, DRAFT EIS, AFS, ID, JJ* (Jerry Johnson) Ecosystem Restoration Project, Implementation, Clearwater National Forest, Lochsa Ranger District (Powell), Idaho County, ID, Due: May 22, 2000, Contact: Ken Hotchkiss (208) 942-3113. Published FR-04-14-00—Correction to Comment Period from 5-15-2000 to 05-22-2000.

Dated: April 11, 2000.

**Joseph C. Montgomery,**  
Director, NEPA Compliance Division, Office  
of Federal Activities.

[FR Doc. 00-9370 Filed 4-13-00; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6253-3]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 27, 2000 through March 31, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

#### Summary of Rating Definitions Environmental Impact of the Action

##### LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

##### EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

##### EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

##### EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are

unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

#### Adequacy of the Impact Statement

##### Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

##### Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

##### Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

#### Draft EISs

ERP No. D-BIA-K65223-CA Rating EC2, Cortina Integrated Solid Waste Management Project, Development and Operation, Approval of Land Lease Cortina Indian Rancheria of Wintin Indians, Colusa County, CA.

*Summary:* EPA expressed environmental concerns regarding water quality impacts and the lack of mitigation measures.

ERP No. D-BLM-L65338-OR

Rating EC2, John Day River Management Plan, Implementation, John Day River Basin, Gilliam, Grant, Wheeler, Crook, Harney, Jefferson, Morrow, Sherman, Umatilla, Union and Wasco Counties, OR.

*Summary:* EPA expressed concern about the degraded environmental conditions in the wild and scenic corridor and the relatively minor adjustments being proposed for land management, which may not be sufficient to protect/enhance the resource values, or comply with state water quality standards. EPA requested that the plan include both implementation and effectiveness monitoring to measure progress in meeting goals/objectives, and to enable BLM and partners to make needed adjustments.

ERP No. D-DOE-L09814-ID Rating EC2, Idaho High-Level Waste and Facilities Disposition, Construction and Operation, Bannock, Bingham, Bonneville, Butte, Clark, Jefferson and Madison Counties, ID.

*Summary:* EPA expressed concerns about, and requested additional information on: (1) The effectiveness of the grout containing the low-level waste (LLW) in preventing contamination of the aquifer for 500 years, (2) the reclassification of waste stream products as LLW, (3) the existence of adequate facilities for handling LLW, (4) the feasibility of the Hanford alternative, and (5) the accuracy of the cost analysis.

No. D-SFW-L36100-WA Rating EC2, Tacoma Water Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan, Implementation, Issuance of a Multiple Species Permit for Incidental Take, King County, WA.

*Summary:* EPA expressed environmental concerns regarding flow management, fish passage, and adaptive management. Additional information was requested on gravel enrichment, water conservation, cumulative effects, and the need to integrate the terms of the HCP with the TMDL for 303(d) listed waters.

ERP No. D-SFW-L65335-WA Rating EC2, Crown Pacific Project, Issuance of a Multiple Species Permit for Incidental Take, Hamilton Tree Farm, Habitat Conservation Plan, Whatcom and Skaget County, WA.

*Summary:* EPA had environmental concerns regarding the issuance of the Incidental Take Permit. EPA suggested that Crown Pacific should improve the

approach to riparian management; apply the mass wasting prescriptions on a limited area/trial basis; and establish quantitative, measurable performance targets for resource management objectives. In addition, EPA recommended that adaptive management commitments be incorporated into the HCP and/or that a shorter term for the ITP, with an option to renew, be considered.

#### Final EISs

*ERP No. F-DOE-L09812-WA* Hanford Remedial Action, Revised and New Alternatives, Comprehensive Land Use Plan, Hanford Site lies in the Pasco Basin of the Columbia Plateau, WA.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F-SFW-L64045-00* Grizzly Bear (*Ursus arctos horribilus*) Recovery Plan in the Bitterroot Ecosystem, Implementation, Endangered Species Act, Proposed Special Rule 10(j) Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area, Rocky Mountain, Blaine, Camas, Boise, Clearwater, Custer, Elmore, Idaho, Lemhi, Shoshone.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: April 11, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00-9371 Filed 4-13-00; 8:45 am]

BILLING CODE 6560-50-U

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6577-6]

#### Notice of Proposed Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), East Multnomah County Groundwater Contamination Site, Portland, OR

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

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that the United States Environmental Protection Agency ("EPA"), the State of Oregon Department of Environmental Quality ("DEQ") and the City of Portland ("the City") have negotiated a proposed

Administrative Order on Consent ("Consent Order") pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622(g), as amended, and applicable Oregon state law, to be issued jointly by EPA and DEQ to the City, with respect to the East Multnomah County Groundwater Contamination Site in Oregon ("Site").

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

**ADDRESSES:** Comments should be addressed to Alan Goodman, Project Manager, Oregon Operations Office, Environmental Protection Agency, 811 SW Sixth Avenue, 3rd Floor, Portland, Oregon, 97204, and refer to In the Matter of East Multnomah County Groundwater Contamination Site, Proposed Administrative Order on Consent for the City of Portland.

#### FOR FURTHER INFORMATION CONTACT:

Alan Goodman, Project Manager, Oregon Operations Office, Environmental Protection Agency, 811 SW Sixth Avenue, 3rd Floor, Portland, Oregon, 97204, (503) 326-3685.

**SUPPLEMENTARY INFORMATION:** The City's primary emergency and seasonal water supply is the Columbia South Shore Well Field in East Multnomah County. The City's well field is downgradient from known sources of hazardous substance groundwater contamination that are part of the Site. The City owns property at each of the well sites, as well as other property and easements throughout the well field area. Based on certifications and disclosures by the City, EPA and DEQ have concluded that the City has not disposed of or arranged for the disposal of hazardous substances at the Site. EPA and DEQ have also concluded that, although City pumping in 1987 may have caused the movement of contamination, the City has not contributed to a release of hazardous substances at the Site resulting in the incurrence of response costs by the government or other authorized parties. EPA and DEQ have a Memorandum of Agreement to coordinate their activities to require parties responsible for the contamination to cleanup the Site.

The major provisions of the Consent Order require a cash payment from the City to DEQ, which is the lead Agency managing cleanup of the Site, to help defray past or future response costs at or in connection with the Site, including costs incurred in connection with negotiation and entry of this Consent Order, and a grant of access by the City to DEQ and EPA to the City property for all response activities to be taken at the Site; in exchange for legal protection for the City for cleanup liability at the Site in the form of a covenant not to sue from EPA and DEQ.

Copies of the proposed Consent Order may be examined at the Oregon Operations Office, 811 SW Sixth Avenue, 3rd Floor, Portland, Oregon, 97204. A Copy of the proposed Consent Order may be obtained by mail or in person from the Oregon Operations Office.

**Authority:** The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i).

**Chuck Findley,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00-9236 Filed 4-13-00; 8:45 am]

BILLING CODE 6560-50-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 6, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A-804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0465.

*Title:* Section 74.985 Signal Booster Stations.

*Form Number:* None.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Number of Respondents:* 6,300.

*Estimated time per response:* 0.083 hours—8.25 hours (depending on requirements, this time is split between respondent, and legal consultant).

*Total annual burden:* 919 hours.

*Total annual costs:* \$2,252,500.

*Needs and Uses:* Section 74.985(a) requires that MDS/ITFS booster stations obtain consent of affected cochannel licensees when the aggregate power flux density generated by a main station and all associated signal booster stations and all simultaneously operating cochannel response stations exceeds prescribed levels.

In addition to the information contained on FCC Form 331, Section 74.985(b) requires an applicant to submit any additional engineering data or showings, both in hard copy and on 3.5" computer diskettes in specified formats, and accompanying duplicates of the application forms, to the Commission's contractor for public service records duplication. By doing this, the engineering information will be available to all present and future affected parties.

Section 74.985(b) requires applicants for response station hubs/high power booster stations to serve a copy of the application and accompanying engineering materials on each potentially affected cochannel or adjacent channel party.

Section 74.985(d) requires that when an application for a high-power ITFS signal booster is granted, the licensee or conditional licensee maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

Section 74.985(e) requires that applicants for low-power MDS or ITFS signal booster stations must, within 48 hours after installation, submit to the Commission's contractor for public

service records duplication duplicate hard copies of the FCC Form 331, and all engineering materials called for in Section 74.985(e) both in hard copy and on 3.5" computer diskettes.

Section 74.985(e)(iv) requires applicants for low power signal booster stations to serve a copy of the application and accompanying engineering materials on each potentially affected parties with protected services areas within an 8 kilometers radius.

Section 74.985(f) requires the conditional licensee of an ITFS response station hub/booster to file a letter informing the Commission of completion of construction of the hub/booster. The Commission has OMB approval for this requirement under the FCC Form 330-A (3060-0891).

The Commission and the public will use this information to ensure that MDS and ITFS applicants, conditional licensees and licensees have considered properly under the Commission's rules the potential for harmful interference from their facilities.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-9344 Filed 4-13-00; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 6, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060-xxxx.

*Title:* Automated Maritime Telecommunications System (AMTS)—80.385 Frequencies for automated systems, 80.475 Scope of service of the AMTS, and 97.303 Frequency sharing requirements.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit, individuals.

*Number of Respondents:* 15.

*Estimated Time Per Response:* .3 hours.

*Total Annual Burden:* 3 hours.

*Total Annual Cost:* No annual cost burden on respondents from either capital or start-up costs.

*Needs and Uses:* The information collection contained in sections 80.385, 80.475 and 97.303 is necessary to require licensees of Automated Maritime Telecommunications System (AMTS) stations to notify TV stations and two organizations (the American Radio Relay League (ARRL), and Interactive Systems, Inc.) that maintain databases of AMTS locations for the benefit of amateur radio operators of the location of AMTS fill-in stations. Amateur radio operators use some of the same frequencies (219—220 MHz) as AMTS stations on a secondary, non-interference basis for digital message forwarding systems and are prohibited within 80 km of an AMTS station. Additionally, reporting requirements are necessary to require amateurs proposing to operate within 640 km of an AMTS station to notify the AMTS licensee as well as the ARRL, one of the organizations that maintain databases of AMTS locations.

*OMB Approval Number:* 3060-0481.  
*Title:* Application for Renewal of Private Radio Station License.

*Form Number:* FCC 452R.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals, State or Local Governments, Business or other For-Profit, Non-profit institutions.

*Number of Respondents:* 2,700.

*Estimated Time Per Response:* 10 minutes.

*Total Annual Burden:* 448 hours.

*Needs and Uses:* Aviation Ground and Marine Coast Radio Station licensees are required to apply for renewal of their radio station authorization every five years. This short form renewal application is generated by the Commission and sent to the licensee as a reminder approximately 90 days prior to license expiration.

The form is required by the Communications Act; International Treaties and FCC Rules—47 CFR 1.926, 80.19 and 87.21.

Estimated costs associated with this application are application and regulatory fees totaling \$284,000.

*OMB Approval Number:* 3060-0746.

*Title:* Application for Electronic Renewal of Wireless Radio Services Authorization.

*Form Number:* FCC 900.

*Type of Review:* Extension of an existing collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 35,255.

*Estimated Time Per Response:* 10 minutes.

*Total Annual Burden:* 5,852 hours.

*Needs and Uses:* The "generic" renewal application may be used in lieu of FCC Forms 313R, 405A, 405B, 452R, and 574R, to file electronically for renewal of a Wireless Radio Service authorization. Concurrent with renewal, applicants may also request a change of licensee name (with no change to corporate structure, ownership or control), change of mailing address, change the name of their ship, add an official ship number, and notify the Commission of a change in the number of mobiles/pagers for a Land Mobile license.

This generic renewal form may not be filed manually. When filed, immediate confirmation that the renewal has been filed giving them continued operating authority to operate until the renewed license has been received.

Once the radio services are converted to the Universal Licensing System (currently being implemented), applicants may no longer use FCC Form

900 to renew. We anticipate that this collection will be obsolete by the end of calendar year 2000.

Estimated costs associated with this collection including application and regulatory fees are approximately \$2,156,000.

*OMB Approval Number:* 3060-0104.

*Title:* Temporary Permit to Operate a Part 90 Radio Station.

*Form Number:* FCC 572.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit; individuals or households; State or Local Governments; non-profit institutions.

*Number of Recordkeepers:* 2,000.

*Estimated Time Per Response:* 6 minutes (.10).

*Total Annual Burden:* 200 hours.

*Needs and Uses:* FCC Rules require that applicants complete FCC Form 572 if they wish to have immediate authorization to operate 2-way radio equipment already authorized in Part 90 radio services. This form is not submitted to the FCC but is retained in the applicant's possession while their application for licensing is being processed by the FCC.

This form is required by the Communications Act, International Treaties and FCC Rules 47 CFR 1.922, and 1.925, 90.119, 90.159, 90.437 and 90.657.

No cost burden associated with this collection.

*OMB Approval Number:* 3060-0049.

*Title:* Application for Restricted Radiotelephone Operator Permit.

*Form Number:* FCC 753.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals.

*Number of Respondents:* 19,000.

*Estimated Time Per Response:* 20 minutes.

*Total Annual Burden:* 6,270 hours.

*Needs and Uses:* In accordance with the Communications Act, applicants must possess certain qualifications in order to qualify for a radio operator license. The data submitted on FCC Form 753 aids the Commission in determining whether the applicant possesses these qualifications. The form is required by FCC Rules 47 CFR parts 13 and 1.83. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications for the license.

Estimated costs for this collection which includes application fee is approximately \$540,000.

*OMB Approval Number:* 3060-0025.

*Title:* Application for Restricted Radiotelephone Operator Permit—Limited Use.

*Form Number:* FCC 755.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals.

*Number of Respondents:* 1,000.

*Estimated Time Per Response:* 20 minutes (.33).

*Total Annual Burden:* 330 hours.

*Needs and Uses:* In accordance with the Communications Act, applicants must possess certain qualifications in order to qualify for a radio operator license. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications for the license. Applicants using this form are not eligible for employment in the United States but need an operator permit because they hold an Aircraft Pilot Certificate which is valid in the U.S. and need to operate aircraft radio stations; or they hold an FCC radio station license and will use the permit for operation of that particular station.

Estimated costs associated with this collection which includes application fees is approximately \$45,000.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-9345 Filed 4-13-00; 8:45 am]

**BILLING CODE 6712-01-P**

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## FEDERAL HOUSING FINANCE BOARD

[No. 2000-N-3]

### Federal Home Loan Bank Members Selected for Community Support Review

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

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**SUMMARY:** The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000-01 first quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

**DATES:** Bank members selected for the 2000-01 first quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before May 29, 2000.

**ADDRESSES:** Bank members selected for the 2000–01 first quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, or by electronic mail at FITZGERALDE@FHFB.GOV.

**FOR FURTHER INFORMATION CONTACT:** Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

**SUPPLEMENTARY INFORMATION:**

**I. Selection for Community Support Review**

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. See 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. See 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. See 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for

community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 29, 2000 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before April 28, 2000, each Bank will notify the members in its district that have been selected for the 2000–01 first quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 first quarter community support review cycle:

**Federal Home Loan Bank of Boston—District 1**

*Name/City/State*

The Canaan National Bank, Canaan, Connecticut  
 Advest Bank and Trust Company, Hartford, Connecticut  
 Litchfield Bancorp, Litchfield, Connecticut  
 The Milford Bank, Milford, Connecticut  
 New Milford Savings Bank, New Milford, Connecticut  
 Prime Bank, Orange, Connecticut  
 National Iron Bank, Salisbury, Connecticut  
 First National Bank of Suffield, Suffield, Connecticut  
 Savings Institute, Willimantic, Connecticut  
 Mechanics Savings Bank, Auburn, Maine  
 Pepperell Trust Company, Biddeford, Maine  
 Oxford Federal Credit Union, Oxford, Maine  
 Adams Co-operative Bank, Adams, Massachusetts  
 Beverly Co-op, Beverly, Massachusetts  
 Wainwright Bank and Trust Company, Boston, Massachusetts  
 Capital Crossing, Boston, Massachusetts

East Boston Savings Bank, Boston, Massachusetts  
 Brookline Cooperative Bank, Brookline, Massachusetts  
 Chelsea-Provident Co-operative Bank, Chelsea, Massachusetts  
 Massachusetts Co-operative Bank, Dorchester, Massachusetts  
 East Bridgewater Savings Bank, East Bridgewater, Massachusetts  
 Fall River Five Cents Savings Bank, Fall River, Massachusetts  
 Cape Cod Five Cents Savings Bank, Harwich Port, Massachusetts  
 Charter Bank, a Cooperative Bank, Hyannis, Massachusetts  
 Cape Cod Bank and Trust Company, Hyannis, Massachusetts  
 The First National Bank of Ipswich, Ipswich, Massachusetts  
 Marlborough Co-operative Bank, Marlborough, Massachusetts  
 Century Bank and Trust Company, Medford, Massachusetts  
 Needham Co-operative Bank, Needham, Massachusetts  
 Hoosac Bank, North Adams, Massachusetts  
 North Brookfield Savings Bank, North Brookfield, Massachusetts  
 Easton Cooperative Bank, North Easton, Massachusetts  
 Rockland Trust Company, Rockland, Massachusetts  
 Park West Bank and Trust Company, West Springfield, Massachusetts  
 UniBank for Savings, Whitinsville, Massachusetts  
 Williamstown Savings Bank, Williamstown, Massachusetts  
 First Massachusetts Bank, N.A., Worcester, Massachusetts  
 Community Guaranty Savings Bank, Plymouth, New Hampshire  
 Community Bank and Trust Company, Wolfeboro, New Hampshire  
 St. Mary's Bank, Manchester, New Hampshire  
 Coventry Credit Union, Coventry, Rhode Island  
 Domestic Bank, Cranston, Rhode Island  
 Bank Rhode Island, East Providence, Rhode Island  
 Home Loan and Investment Bank, FSB, Warwick, Rhode Island  
 Randolph National Bank, Randolph, Vermont  
 Citizens Savings Bank and Trust Company, St. Johnsbury, Vermont

**Federal Home Loan Bank of New York—District 2**

*Name/City/State*

United National Bank, Bridgewater, New Jersey  
 Morgan Stanley Dean Witter Trust FSB, Jersey City, New Jersey  
 Provident Savings Bank, Jersey City, New Jersey

Hudson United Bank, Mahwah, New Jersey  
 Atlantic Stewardship Bank, Midland Park, New Jersey  
 First Morris Bank, Morris Township, New Jersey  
 City National Bank of New Jersey, Newark, New Jersey  
 Bergen Commercial Bank, Paramus, New Jersey  
 Phillipsburg National Bank, Phillipsburg, New Jersey  
 Mon-Oc Federal Credit Union, Toms River, New Jersey  
 Yardville National Bank, Trenton, New Jersey  
 First Washington State Bank, Windsor, New Jersey  
 Bank of Gloucester County, Woodbury, New Jersey  
 The Canandaigua National Bank & Trust Co., Canandaigua, New York  
 Country Bank, Carmel, New York  
 Chemung Canal Trust Company, Elmira, New York  
 Queens County Savings Bank, Flushing, New York  
 National Bank of New York City, Flushing, New York  
 The Hudson River Bank & Trust Company, Hudson, New York  
 Long Island Commercial Bank, Islandia, New York  
 Rondout Savings Bank Kingston New York  
 First Niagara Bank, Lockport, New York  
 Citizens National Bank of Malone, Malone, New York  
 State Bank of Long Island, New Hyde Park, New York  
 Eastbank, N.A., New York, New York  
 PathFinder Bank, Oswego, New York  
 The Pavilion State Bank, Pavilion, New York  
 Rhinebeck Savings Bank, Rhinebeck, New York  
 Tioga State Bank, Spencer, New York  
 Tupper Lake National Bank, Tupper Lake, New York  
 The Warwick Savings Bank, Warwick, New York  
 Banco Santander Puerto Rico, San Juan, Puerto Rico

**Federal Home Loan Bank of Pittsburgh—District 3**

*Name/City/State*

County Bank, Rehoboth Beach, Delaware  
 Cheltenham Hills Savings Association, Abington, Pennsylvania  
 Kishacoquillas Valley National Bank, Belleville, Pennsylvania  
 Summit Bank, Bethlehem, Pennsylvania  
 County National Bank, Clearfield, Pennsylvania  
 Citizens Trust Company, Coudersport, Pennsylvania

Downington National Bank, Downington, Pennsylvania  
 Farmers National Bank of Emlenton, Emlenton, Pennsylvania  
 First American National Bank of Pennsylvania, Everett, Pennsylvania  
 Southwest National Bank of Pennsylvania, Greensburg, Pennsylvania  
 Harleysville Savings Bank, Harleysville, Pennsylvania  
 First National Bank of Herminie, Herminie, Pennsylvania  
 First National Bank of Pennsylvania, Hermitage, Pennsylvania  
 Hollidaysburg Trust Company, Hollidaysburg, Pennsylvania  
 Wayne Bank, Honesdale, Pennsylvania  
 The Honesdale National Bank, Honesdale, Pennsylvania  
 Penn Central National Bank, Huntingdon, Pennsylvania  
 Laurel Bank, Johnstown, Pennsylvania  
 United States National Bank in Johnstown, Johnstown, Pennsylvania  
 Lebanon Valley Farmers Bank, Lebanon, Pennsylvania  
 Luzerne National Bank, Luzerne, Pennsylvania  
 Marion Center National Bank, Marion Center, Pennsylvania  
 Second National Bank of Masontown, Masontown, Pennsylvania  
 Old Forge Bank, Old Forge, Pennsylvania  
 Rossini Savings Association, Philadelphia, Pennsylvania  
 Chestnut Street Building and Loan Assn., Philadelphia, Pennsylvania  
 Northwood Savings Association, Philadelphia, Pennsylvania  
 Cammar Building and Loan Association, Pittsburgh, Pennsylvania  
 First National Bank of Port Allegany, Port Allegany, Pennsylvania  
 Great Valley Bank, Reading, Pennsylvania  
 Community First Bank, N.A., Reynoldsville, Pennsylvania  
 Farmers Building and Savings Bank, Rochester, Pennsylvania  
 Hamlin Bank and Trust Company, Smethport, Pennsylvania  
 Eagle National Bank, Upper Darby, Pennsylvania  
 Bruceton Bank, Bruceton Mills, West Virginia  
 Mountain Valley Bank, N.A., Elkins, West Virginia  
 Calhoun County Bank, Inc., Grantsville, West Virginia  
 One Valley Bank of Huntington, Huntington, West Virginia  
 The Harrison County Bank, Lost Creek, West Virginia  
 One Valley Bank-East, N.A., Martinsburg, West Virginia  
 South Branch Valley National Bank, Moorefield, West Virginia

The Grant County Bank, Petersburg, West Virginia  
 Union Bank of Tyler County, Sistersville, West Virginia  
 First National Bank, St. Marys, West Virginia  
 The Terra Alta Bank, Terra Alta, West Virginia  
 Wheeling National Bank, Wheeling, West Virginia  
 Matewan National Bank, Williamson, West Virginia

**Federal Home Loan Bank of Atlanta—District 4**

*Name/City/State*

First National—America's Bank, Sylacauga, Alabama  
 Bank of Tuscaloosa, Tuscaloosa, Alabama  
 Citizens Bank of Winfield, Winfield, Alabama  
 The Adams National Bank, Washington, District of Columbia  
 Fleet Bank, F.S.B., Boca Raton, Florida  
 First National Bank of Manatee, Bradenton, Florida  
 American Bank, Bradenton, Florida  
 The Hernando County Bank, Brooksville, Florida  
 Drummond Community Bank, Chiefland, Florida  
 Crystal River Bank, Crystal River, Florida  
 First National Bank of Pasco, Dade City, Florida  
 BankFIRST, Eustis, Florida  
 Community Bank of Homestead, Homestead, Florida  
 First National Bank of Homestead, Homestead, Florida  
 Marine National Bank of Jacksonville, Inc., Jacksonville, Florida  
 First National Bank of the Florida Keys, Marathon, Florida  
 Marine Bank of the Florida Keys, Marathon, Florida  
 Fidelity Bank of Florida, Merritt Island, Florida  
 Coconut Grove Bank, Miami, Florida  
 Peoples National Bank of Commerce, Miami, Florida  
 The International Bank of Miami, N.A., Miami, Florida  
 Fifth Third Bank of Florida, Naples, Florida  
 Peoples National Bank of Niceville, Niceville, Florida  
 Security Bank, N.A., North Lauderdale, Florida  
 Independent National Bank, Ocala, Florida  
 Friendship Community Bank, Ocala, Florida  
 Enterprise National Bank of Palm Beach, Palm Beach Gardens, Florida  
 First State Bank, Sarasota, Florida  
 First National Bank of Florida, Seminole, Florida

Prosperity Bank of St. Augustine, St. Augustine, Florida	Rossville Bank, Rossville, Georgia	<b>Federal Home Loan Bank of Cincinnati—District 5</b>
Republic Bank, St. Petersburg, Florida	West Central Georgia Bank, Thomaston, Georgia	<i>Name/City/State</i>
United Bank and Trust Company, St. Petersburg, Florida	First National Bank of Cherokee, Woodstock, Georgia	Bank of Clinton County, Albany, Kentucky
Guaranty National Bank, Tallahassee, Florida	First National Bank of Maryland, Baltimore, Maryland	Citizens Deposit Bank, Arlington, Kentucky
Premier Bank, Tallahassee, Florida	Midstate Federal Savings and Loan Association, Baltimore, Maryland	Classic Bank, Ashland, Kentucky
Tri-County Bank, Trenton, Florida	Carrollton Bank, Baltimore, Maryland	Peoples Bank of Madison County, Berea, Kentucky
First National Bank of Wauchula, Wauchula, Florida	Rushmore Trust and Savings, F.S.B., Bethesda, Maryland	Citizens Bank, Brodhead, Kentucky
Adel Banking, Company, Adel, Georgia	Glen Burnie Mutual Savings Bank, Glen Burnie, Maryland	Deposit Bank of Carlisle, Carlisle, Kentucky
First National Bank of Alma, Alma, Georgia	Hebron Savings Bank, Hebron, Maryland	Peoples State Bank, Chaplin, Kentucky
Alma Exchange Bank and Trust, Alma, Georgia	First Financial of Maryland Federal, Lutherville-Timonium, Maryland	Tri-County National Bank, Corbin, Kentucky
Net.B@nk, Alpharetta, Georgia	Regal Savings Bank, F.S.B., Owings Mills, Maryland	Farmers National Bank, Danville, Kentucky
Citizens Bank of Americus, Americus, Georgia	Provident State Bank, Preston, Maryland	Dixon Bank, Dixon, Kentucky
Athens First Bank and Trust Company, Athens, Georgia	Queenstown Bank of Maryland, Queenstown, Maryland	First Citizens Bank, Elizabethtown, Kentucky
Fidelity National Bank, Atlanta, Georgia	Wilmington Trust FSB, Salisbury, Maryland	Farmers Bank and Capital Trust Company, Frankfort, Kentucky
The Bankers Bank, Atlanta, Georgia	Blue Ridge Savings Bank, Inc., Asheville, North Carolina	Franklin Bank and Trust Company, Franklin, Kentucky
First Community Bank of Southwest Georgia, Bainbridge, Georgia	The Morris Plan Industrial Bank, Burlington, North Carolina	Georgetown Bank and Trust Company, Georgetown, Kentucky
Cairo Banking Company, Cairo, Georgia	Park Meridian Bank, Charlotte, North Carolina	First National Bank & Trust Company, Georgetown, Kentucky
Georgia Bank and Trust, Calhoun, Georgia	Yadkin Valley Bank and Trust Company, Elkin, North Carolina	Farmers Bank & Trust Company, Georgetown, Kentucky
Bank of Canton, Canton, Georgia	Fidelity Bank, Fuquay-Varina, North Carolina	Peoples Bank and Trust Company, Greensburg, Kentucky
Community First Bank, Carrollton, Georgia	Bank of Granite, Granite Falls, North Carolina	The Peoples State Bank, Hodgenville, Kentucky
The Brown Bank, Cobbtown, Georgia	Peoples Bank, Newton, North Carolina	United Southern Bank, Hopkinsville, Kentucky
Community Bank and Trust—Jackson, Commerce, Georgia	First National Bank of Reidsville, Reidsville, North Carolina	Kentucky Banking Centers, Inc., Horse Cave, Kentucky
First National Bank of Commerce, Commerce, Georgia	First Western, Spruce Pine, North Carolina	Republic Bank and Trust Company, Louisville, Kentucky
Cordele Banking Company, Cordele, Georgia	Wake Forest FS&LA, Wake Forest, North Carolina	The First National Bank of Mayfield, Mayfield, Kentucky
Community Bank and Trust-Habersham, Cornelia, Georgia	First FS&LA of Charleston, Charleston, South Carolina	Jackson County Bank, McKee, Kentucky
Hardwick Bank and Trust Company, Dalton, Georgia	First Piedmont Federal Savings and Loan, Gaffney, South Carolina	Farmers Bank of Milton, Milton, Kentucky
Merchants and Farmers Bank, Donalsonville, Georgia	American Federal Bank, FSB, Greenville, South Carolina	Morehead National Bank, Morehead, Kentucky
Bank of Dudley, Dudley, Georgia	Horry County State Bank, Loris, South Carolina	Morganfield National Bank, Morganfield, Kentucky
Citizens Bank and Trust Company, Eastman, Georgia	Orangeburg National Bank, Orangeburg, South Carolina	Peoples Bank and Trust Company, Owenton, Kentucky
Bank of Ellaville, Ellaville, Georgia	Carolina Southern Bank, Spartanburg, South Carolina	First National Bank of Paintsville, Paintsville, Kentucky
Fairburn Banking Company, Fairburn, Georgia	AmSouth, Bristol, Virginia	Citizens Bank, Sharpsburg, Kentucky
First Citizens Bank of Fayette County, Fayetteville, Georgia	The Bank of Franklin, Franklin, Virginia	Springfield State Bank, Springfield, Kentucky
First National Bank of Griffin, Griffin, Georgia	Old Point National Bank of Phoebus, Hampton, Virginia	Powell County Bank, Stanton, Kentucky
The Citizens Bank, Hogansville, Georgia	Chesapeake Bank, Kilmarnock, Virginia	First Kentucky Bank, Sturgis, Kentucky
McIntosh State Bank, Jackson, Georgia	Salem Bank and Trust, N.A., Salem, Virginia	Peoples Bank of Tompkinsville, Tompkinsville, Kentucky
First National Bank and Trust Company, Louisville, Georgia	Community Bank of Northern Virginia, Sterling, Virginia	Citizens Deposit Bank and Trust, Vanceburg, Kentucky
Bank of Madison, Madison, Georgia	Citizens and Farmers Bank, West Point, Virginia	The Bank of Whitesburg, Whitesburg, Kentucky
Exchange Bank, Milledgeville, Georgia		Peoples Commercial Bank, Winchester, Kentucky
Bank of Monticello, Monticello, Georgia		The Apple Creek Banking Company, Apple Creek, Ohio
American Banking Company, Moultrie, Georgia		
First Citizens Bank, Newnan, Georgia		
Bank of Quitman, Quitman, Georgia		
The Tattnell Bank, Reidsville, Georgia		
Bryan Bank and Trust, Richmond Hill, Georgia		
Northwest Georgia Bank, Ringgold, Georgia		

First National Bank, Bellevue, Ohio  
 Community First Bank and Trust,  
 Celina, Ohio  
 Park View Federal Savings Bank,  
 Cleveland, Ohio  
 The Clyde Savings Bank Company,  
 Clyde, Ohio  
 The Cortland Savings and Banking  
 Company, Cortland, Ohio  
 The Community Bank, Crooksville,  
 Ohio  
 Dover-Phila Federal Credit Union,  
 Dover, Ohio  
 First Federal Savings Bank of Dover,  
 Dover, Ohio  
 First National Community Bank, East  
 Liverpool, Ohio  
 Peoples Bank of Gambier, Gambier,  
 Ohio  
 The Genoa Banking Company, Genoa,  
 Ohio  
 The Glouster Community Bank,  
 Glouster, Ohio  
 The Richland Trust Company,  
 Mansfield, Ohio  
 The Metamora State Bank, Metamora,  
 Ohio  
 Consumers National Bank, Minerva,  
 Ohio  
 The Henry County Bank, Napoleon,  
 Ohio  
 Home FS&LA of Niles, Niles, Ohio  
 Osgood State Bank, Osgood, Ohio  
 The Sabina Bank, Sabina, Ohio  
 Somerville National Bank, Somerville,  
 Ohio  
 Champaign National Bank, and Trust  
 Urbana, Ohio  
 First National Bank of Zanesville,  
 Zanesville, Ohio  
 Bank of Cleveland, Cleveland,  
 Tennessee  
 First Farmers and Merchants National  
 Bank, Columbia, Tennessee  
 Citizens Tri-County Bank, Dunlap,  
 Tennessee  
 Citizens Bank, Elizabethton, Tennessee  
 Erwin National Bank, Erwin, Tennessee  
 Andrew Johnson Bank, Greeneville,  
 Tennessee  
 First Vantage Bank, Knoxville,  
 Tennessee  
 City State Bank, Martin, Tennessee  
 Union Planters Bank of the Lakeway  
 Area, Morristown, Tennessee  
 Bank of Nashville, Nashville, Tennessee  
 Capital Bank and Trust Company,  
 Nashville, Tennessee  
 The Oakland Deposit Bank, Oakland,  
 Tennessee  
 Farmers Bank, Parsons, Tennessee  
 First National Bank, Pulaski, Tennessee  
 First Claiborne Bank, Tazewell,  
 Tennessee

**Federal Home Loan Bank of  
 Indianapolis—District 6**

*Name/City/State*

Community State Bank, Avilla, Indiana

Bath State Bank, Bath, Indiana  
 First Bank of Berne, Berne, Indiana  
 Bippus State Bank, Bippus, Indiana  
 Monroe County Bank, Bloomington,  
 Indiana  
 Farmers and Merchants Bank, Boswell,  
 Indiana  
 Farmers State Bank, Brookston, Indiana  
 People's Trust Company, Brookville,  
 Indiana  
 Irwin Union Bank and Trust Company,  
 Columbus, Indiana  
 Fountain Trust Company, Covington,  
 Indiana  
 DeMotte State Bank, DeMotte, Indiana  
 Peoples State Bank of Ellettsville,  
 Ellettsville, Indiana  
 National City Bank of Evansville,  
 Evansville, Indiana  
 Bank of Geneva, Geneva, Indiana  
 Mercantile National Bank of Indiana,  
 Hammond, Indiana  
 Meridian Mutual Insurance Company,  
 Indianapolis, Indiana  
 National City Bank of Indiana,  
 Indianapolis, Indiana  
 Salin Bank and Trust Company,  
 Indianapolis, Indiana  
 The National Bank of Indianapolis,  
 Indianapolis, Indiana  
 Kentland Federal Savings and Loan  
 Association, Kentland, Indiana  
 Farmers State Bank, Lanesville, Indiana  
 American State Bank, Lawrenceburg,  
 Indiana  
 Peoples Trust Company, Linton, Indiana  
 Independence Bank (Marengo), New  
 Albany, Indiana  
 Indiana Lawrence Bank, North  
 Manchester, Indiana  
 First National Bank, Portland, Indiana  
 Morris Plan Company of Terre Haute,  
 Inc., Terre Haute, Indiana  
 Lake City Bank, Warsaw, Indiana  
 Peoples Loan and Trust Bank,  
 Winchester, Indiana  
 Alden State Bank, Alden, Michigan  
 Hospital and Health Services Credit  
 Union, Ann Arbor, Michigan  
 Home Federal Savings Bank, Detroit,  
 Michigan  
 First National Bank of Michigan, East  
 Lansing, Michigan  
 The State Bank of Fenton, Fenton,  
 Michigan  
 Dort Federal Credit Union, Flint,  
 Michigan  
 First Bank, Upper Michigan, NA,  
 Gladstone, Michigan  
 United Bank of Michigan, Grand Rapids,  
 Michigan  
 MFC First National Bank, Houghton,  
 Michigan  
 MFC First National Bank, Iron  
 Mountain, Michigan  
 MFC First National Bank, Iron River,  
 Michigan  
 Lansing Automakers, Lansing, Michigan  
 North Country Bank and Trust,  
 Manistiquet, Michigan

Farmers State Bank of Munith, Munith,  
 Michigan  
 Royal Oak Community Credit Union,  
 Royal Oak, Michigan

**Federal Home Loan Bank of Chicago—  
 District 7**

*Name/City/State*

Anchor State Bank, Anchor, Illinois  
 State Bank of Auburn, Chatham, Illinois  
 First State Bank of Beardstown,  
 Beardstown, Illinois  
 Germantown Trust & Savings Bank,  
 Breese, Illinois  
 First National Bank, Bridgeport, Illinois  
 The Bank of Carbondale, Carbondale,  
 Illinois  
 First National Bank and Trust Company,  
 Carbondale, Illinois  
 Central, Illinois Bank, Champaign,  
 Illinois  
 Chapin Bank, Chapin, Illinois  
 Highland Community Bank, Chicago,  
 Illinois  
 Uptown National Bank of Chicago,  
 Chicago, Illinois  
 Home State Bank/NA, Crystal Lake,  
 Illinois  
 Farmers State Bank of Danforth,  
 Danforth, Illinois  
 PlainsBank of Illinois, N.A., Des Plaines,  
 Illinois  
 Amcore Bank, N.A., Rock River Valley,  
 Dixon, Illinois  
 Durand State Bank, Durand, Illinois  
 First Community Bank, Elgin, Illinois  
 Standard Bank and Trust Company,  
 Evergreen Park, Illinois  
 First Eagle National Bank, Hanover  
 Park, Illinois  
 Bank of Calhoun County, Hardin,  
 Illinois  
 CIB Bank, Rantoul, Illinois  
 The State Bank of Jerseyville,  
 Jerseyville, Illinois  
 First National Bank, Lacon, Illinois  
 Farmers Bank of Liberty, Liberty,  
 Illinois  
 Success National Bank, Lincolnshire,  
 Illinois  
 Banterra Bank, Marion, Illinois  
 Bank of Maroa, Maroa, Illinois  
 First Mid-Illinois Bank and Trust NA,  
 Mattoon, Illinois  
 First State Bank, Mendota, Illinois  
 National State Bank of Metropolis,  
 Metropolis, Illinois  
 Citizens State Bank of Milford, Milford,  
 Illinois  
 Brown County State Bank, Mount  
 Sterling, Illinois  
 State Bank of Orion, Orion, Illinois  
 Citizens National Bank, Paris, Illinois  
 South Side Trust and Savings Bank,  
 Peoria, Illinois  
 Bank of Pontiac, Pontiac, Illinois  
 Princeville State Bank, Princeville,  
 Illinois

Farmers National Bank of Prophetstown, Prophetstown, Illinois	Community Bank, Superior, Wisconsin	Farmers State Bank of New London, New London, Minnesota
Lakeland Community Bank, Round Lake Heights, Illinois	Bank of Verona, Verona, Wisconsin	Woodlands National Bank, Onamia, Minnesota
Marion County Savings Bank, Salem, Illinois	Marathon Savings Bank, Wausau, Wisconsin	United Community Bank, Perham, Minnesota
First Illinois National Bank, Savanna, Illinois	<b>Federal Home Loan Bank of Des Moines—District 8</b>	Farmers and Merchants State Bank of Pierz, Pierz, Minnesota
Bank of Springfield, Springfield, Illinois	<i>Name/City/State</i>	Security State Bank of Pine Island, Pine Island, Minnesota
First Community State Bank, Staunton, Illinois	Liberty Bank, FSB, Arnolds Park, Iowa	First National Bank and Trust, Pipestone, Minnesota
First National Bank in Taylorville, Taylorville, Illinois	Citizens Bank and Trust Company, Belle Plaine, Iowa	State Bank of Richmond, Richmond, Minnesota
First National Bank of Waterloo, Waterloo, Illinois	City State Bank, Central City, Iowa	Minnesota First Credit and Savings, Inc., Rochester, Minnesota
Williamsville State Bank and Trust, Williamsville, Illinois	Midwest Heritage Bank, FSB, Chariton, Iowa	Royalton State Bank, Royalton, Minnesota
Hinsbrook Bank and Trust, Willowbrook, Illinois	Iowa State Bank, Des Moines, Iowa	Capital Bank, Saint Paul, Minnesota
Polk County Bank, Balsam Lake, Wisconsin	Peoples Savings Bank, Elma, Iowa	BEACONBANK, Shorewood, Minnesota
The Baraboo National Bank, Baraboo, Wisconsin	Lee County Bank and Trust, N.A., Fort Madison, Iowa	Southview Bank, South St. Paul, Minnesota
Union Bank of Blair, Blair, Wisconsin	Grinnell State Bank, Grinnell, Iowa	Bremer Bank, N.A., South St. Paul, Minnesota
Great Midwest Bank, S.S.B., Brookfield, Wisconsin	Security State Bank, Independence, Iowa	Farmers & Merchants State Bank of Springfield, Springfield, Minnesota
Bank North, Crivitz, Wisconsin	Community First Bank, Keosauqua, Iowa	Liberty Savings Bank fsb, St. Cloud, Minnesota
MidAmerica Bank, Dodgeville, Wisconsin	Pleasantville State Bank, Pleasantville, Iowa	Highland Banks, St. Michael, Minnesota
First National Bank of Eagle River, Eagle River, Wisconsin	Great River Bank and Trust, Princeton, Iowa	First Integrity Bank, Staples, Minnesota
F&M Bank East Troy, East Troy, Wisconsin	First Federal Savings Bank of Siouxland, Sioux City, Iowa	Central Bank, Stillwater, Minnesota
Royal Bank, Elroy, Wisconsin	Northeast Security Bank, Sumner, Iowa	Northern State Bank of Thief River Falls, Thief River Falls, Minnesota
State Bank of Florence, Florence, Wisconsin	Farmers and Merchants Savings Bank, Waukon, Iowa	Community Bank Vernon Center, Vernon Center, Minnesota
Bank of Galesville, Galesville, Wisconsin	Earlham Savings Bank, West Des Moines, Iowa	Security State Bank of Wells, Wells, Minnesota
First National Bank of Hartford, Hartford, Wisconsin	Farmers Savings Bank, West Union, Iowa	State Bank of Wheaton, Wheaton, Minnesota
MidAmerica Bank Hudson, Hudson, Wisconsin	First Trust and Savings Bank, Wheatland, Iowa	Bremer Bank, N.A., Willmar, Minnesota
River Bank, Stoddard, Wisconsin	North American State Bank, Belgrade, Minnesota	Town and County State Bank of Winona, Winona, Minnesota
Coulee State Bank, La Crosse, Wisconsin	Bremer Bank, N.A., Brainerd, Minnesota	Bank of Advance, Advance, Missouri
Citizens State Bank of Loyal, Loyal, Wisconsin	Stearns Bank Canby, Canby, Minnesota	Carroll County Savings and Loan Association, Carrollton, Missouri
Bank of Luxemburg, Luxemburg, Wisconsin	First National Bank of Chaska, Chaska, Minnesota	Enterprise Bank, Clayton, Missouri
First Business Bank, Madison, Wisconsin	Bremer Bank, N.A., Detroit Lakes, Minnesota	Bank of Crocker, Crocker, Missouri
Associated Bank Lakeshore, N.A., Manitowoc, Wisconsin	Republic Bank, Inc., Duluth, Minnesota	First Midwest Bank of Dexter, Dexter, Missouri
Columbia Savings and Loan Association, Milwaukee, Wisconsin	F & M Bank—Cannon Valley, Dundas, Minnesota	Farmers and Merchants Bank of Hale, Hale, Missouri
Citizens Bank of Mukwonago, Mukwonago, Wisconsin	Bremer Bank, N.A., International Falls, Minnesota	Farmers and Commercial Bank, Holden, Missouri
First State Bank, New London, Wisconsin	Security State Bank of Lewiston, Lewiston, Minnesota	Midwest Independent Bank, Jefferson City, Missouri
Bank of New Richmond, New Richmond, Wisconsin	Minnwest Bank Luverne, Luverne, Minnesota	Exchange National Bank, Jefferson City, Missouri
First Bank of Oconomowoc, Oconomowoc, Wisconsin	Premier Bank, Maplewood, Minnesota	Union Bank, Kansas City, Missouri
Community Bank of Oconto County, Oconto Falls, Wisconsin	Security State Bank of Marine, Marine on St. Croix, Minnesota	Bank Midwest N.A., Kansas City, Missouri
River Valley State Bank, Rothschild, Wisconsin	Bremer Bank, N.A., Marshall, Minnesota	Bannister Bank and Trust, Kansas City, Missouri
Bank of Somerset, Somerset, Wisconsin	Franklin National Bank of Minneapolis, Minneapolis, Minnesota	Country Club Bank, n.a., Kansas City, Missouri
Farmers and Merchants State Bank, Stanley, Wisconsin	L.B. Community Bank & Trust, Minneapolis, Minnesota	First Community Bank of Johnson County, Knob Knoster, Missouri
	Northeast Bank of Minneapolis, Minneapolis, Minnesota	Madison-Hunnell Bank, Madison, Missouri
	First Minnetonka City Bank, Minnetonka, Minnesota	Martinsburg Bank and Trust, Mexico, Missouri
	Minnwest Bank Central, Montevideo, Minnesota	

Central Bank of Lake of the Ozarks, Osage Beach, Missouri  
 First Midwest Bank of Poplar Bluff, Poplar Bluff, Missouri  
 First Community Bank, Missouri, Poplar Bluff, Missouri  
 Citizens Bank of Princeton, Princeton, Missouri  
 Bank of Rothville, Rothville, Missouri  
 Anheuser-Busch Employees' Credit Union, St. Louis, Missouri  
 Citizens National Bank of Greater St. Louis, St. Louis, Missouri  
 Jefferson Bank and Trust Company, St. Louis, Missouri  
 St. Louis Postal Credit Union, St. Louis, Missouri  
 First Community National Bank, Steelville, Missouri  
 American Sterling National Bank, Sugar Creek, Missouri  
 Bank of Sullivan, Sullivan, Missouri  
 Carter County State Bank, Van Buren, Missouri  
 West Plains Bank, West Plains, Missouri  
 Bank of Weston, Weston, Missouri  
 Bank Center First, Bismarck, North Dakota  
 Bank of North Dakota, Bismarck, North Dakota  
 CountryBank, USA, Cando, North Dakota  
 Security First Bank of Oliver County, Center, North Dakota  
 Citizens State Bank, Grafton-Petersburg Grafton, North Dakota  
 Bremer Bank, N.A., Minot, North Dakota  
 Security State Bank of North Dakota, New Salem, North Dakota  
 American State Bank & Trust Co. of Williston, Williston, North Dakota  
 Hand County State Bank, Miller, South Dakota  
 First National Bank, Pierre, South Dakota  
 Rushmore Bank & Trust, Rapid City, South Dakota  
 The First National Bank in Sioux Falls, Sioux Falls South Dakota  
 Marquette Bank South Dakota, N.A., Sioux Falls, South Dakota  
 Day County Bank, Webster, South Dakota

**Federal Home Loan Bank of Dallas—  
 District 9**

*Name/City/State*

Union Bank of Benton, Benton, Arkansas  
 First National Bank, Berryville, Arkansas  
 First Community Bank, P.A., Conway, Arkansas  
 First National Bank of De Queen, De Queen, Arkansas  
 First National Bank, DeWitt, Arkansas  
 Bank of England, England, Arkansas  
 First National Bank, Glenwood, Arkansas

First National Bank of Green Forest, Green Forest, Arkansas  
 Helena National Bank, Helena, Arkansas  
 Bank of North Arkansas, Melbourne, Arkansas  
 Commercial Bank and Trust Company, Monticello, Arkansas  
 First National Bank and Trust Company, Mountain Home, Arkansas  
 Perry County State Bank, Perryville, Arkansas  
 Simmons First National Bank, Pine Bluff, Arkansas  
 Bank of Prescott, Prescott, Arkansas  
 Merchants and Planters Bank, Sparkman, Arkansas  
 First National Bank, Beinville Parrish, Arcadia, Louisiana  
 Louisiana Bank and Trust Company, Baton Rouge, Louisiana  
 Citizens National Bank of Bossier City, Bossier City, Louisiana  
 Parish National Bank, Covington, Louisiana  
 Catahoula—LaSalle Bank, Jonesville, Louisiana  
 Metro Bank, Kenner, Louisiana  
 Hibernia National Bank, New Orleans, Louisiana  
 Guaranty Bank and Trust Company, New Roads, Louisiana  
 Tensas State Bank, Newellton, Louisiana  
 Patterson State Bank, Patterson, Louisiana  
 Iberville Trust and Savings Bank, Plaquemine, Louisiana  
 Rayne State Bank and Trust Company, Rayne, Louisiana  
 Teche Bank and Trust Company, St. Martinville, Louisiana  
 Bank of Sunset and Trust Company, Sunset, Louisiana  
 Washington State Bank, Washington, Louisiana  
 Citizens Bank, Columbia, Mississippi  
 Bank of Kilmichael, Kilmichael, Mississippi  
 Peoples Bank, Mendenhall, Mississippi  
 Bank of Morton, Morton, Mississippi  
 Merchants and Planters Bank, Raymond, Mississippi  
 First National Bank of Wiggins, Wiggins, Mississippi  
 Valley National Bank, Espanola, New Mexico  
 Lea County State Bank, Hobbs, New Mexico  
 Bank of the Rio Grande, Las Cruces, New Mexico  
 White Sands Federal Credit Union, Las Cruces, New Mexico  
 Bank of the Southwest, Roswell, New Mexico  
 Bank of Texas, Austin, Texas  
 Austin County State Bank, Bellville, Texas  
 The First National Bank of Bryan, Bryan, Texas

First Bank and Trust, Childress, Texas  
 Founders National Bank, Dallas, Texas  
 Norwest Bank El Paso, N.A., El Paso, Texas  
 Southwest Bank of Fort Worth, Fort Worth, Texas  
 Hometown Bank, Galveston, Texas  
 Gruver State Bank, Gruver, Texas  
 The First State Bank, Hawkins, Texas  
 Northwest Bank, N.A., Houston, Texas  
 Hull State Bank, Hull, Texas  
 Industry State Bank, Industry, Texas  
 Fredonia State Bank, Nacogdoches, Texas  
 The First National Bank of Refugio, Refugio, Texas

**Federal Home Loan Bank of Topeka—  
 District 10**

*Name/City/State*

Cheyenne Mountain Bank, Colorado Springs, Colorado  
 Bank of Cherry Creek, N.A., Denver, Colorado  
 FirstBank of Cherry Creek, Denver, Colorado  
 FirstBank of Denver, Denver, Colorado  
 Union Bank and Trust, Denver, Colorado  
 Mesa National Bank, Grand Junction, Colorado  
 FirstBank of Colorado, N.A., Lakewood, Colorado  
 FirstBank of South Jeffco, Littleton, Colorado  
 Peoples National Bank, Monument, Colorado  
 Labette County State Bank, Altamont, Kansas  
 Union State Bank, Arkansas City, Kansas  
 The Baxter State Bank, Baxter Springs, Kansas  
 Community Bank, Chapman, Kansas  
 First National Bank, Derby, Kansas  
 Pony Express Community Bank, Ellwood, Kansas  
 Citizens State Bank, Gridley, Kansas  
 Citizens State Bank and Trust Company, Hiawatha, Kansas  
 First National Bank of Hutchinson, Hutchinson, Kansas  
 Brotherhood Bank and Trust Company, Kansas City, Kansas  
 Gold Bank, Leawood, Kansas  
 Security National Bank, Manhattan, Kansas  
 Peoples Bank and Trust Company, McPherson, Kansas  
 First Neodesha Bank, Neodesha, Kansas  
 Hillcrest Bank, Olathe, Kansas  
 Grant County Bank, Ulysses, Kansas  
 Union State Bank, Uniontown, Kansas  
 Corner Bank, N.A., Winfield, Kansas  
 Battle Creek State Bank, Battle Creek, Nebraska  
 First National Bank, Beemer, Nebraska  
 Columbus Bank and Trust Company, Columbus, Nebraska

Fremont National Bank and Trust Company, Fremont, Nebraska  
 Thayer County Bank, Hebron, Nebraska  
 First National Bank and Trust of Kearney, Kearney, Nebraska  
 Union Bank and Trust Company, Lincoln, Nebraska  
 McCook National Bank, McCook, Nebraska  
 Adams Bank and Trust, Ogallala, Nebraska  
 First Westroads Bank, Inc., Omaha, Nebraska  
 Omaha State Bank, Omaha, Nebraska  
 Metro Health Services Federal Credit Union, Omaha, Nebraska  
 Mutual First Federal Credit Union, Omaha, Nebraska  
 First National Bank in Ord, Ord, Nebraska  
 First National Bank, Schuyler, Nebraska  
 Pinnacle Bank, N.A., Shelby, Nebraska  
 Stanton National Bank, Stanton, Nebraska  
 Farmers and Merchants State Bank of Wayne, Wayne, Nebraska  
 American State Bank, Broken Bow, Oklahoma  
 Oklahoma National Bank of Duncan, Duncan, Oklahoma  
 The First National Bank in Durant, Durant, Oklahoma  
 First United Bank and Trust Company, Durant, Oklahoma  
 Central National Bank & Trust Company of Enid, Enid, Oklahoma  
 Farmers and Merchants National Bank, Fairview, Oklahoma  
 Security First National Bank, Hugo, Oklahoma  
 Landmark Bank Company, N.A., Madill, Oklahoma  
 First Fidelity Bank, Oklahoma City, Oklahoma  
 Lincoln National Bank, Oklahoma City, Oklahoma  
 Southwestern Bank and Trust Company, Oklahoma City, Oklahoma  
 Pauls Valley National Bank, Pauls Valley, Oklahoma  
 Home National Bank, Ponca City, Oklahoma  
 Pioneer Bank and Trust, Ponca City, Oklahoma  
 First United Bank, Sapulpa, Oklahoma  
 First State Bank in Temple, Temple, Oklahoma  
 Citizens Bank of Tulsa, Tulsa, Oklahoma  
 First Farmers National Bank, Waurika, Oklahoma

**Federal Home Loan Bank of San Francisco—District 11**

*Name/City/State*

Johnson Bank, Phoenix, Arizona  
 Norwest Bank Arizona, N.A., Phoenix, Arizona

City National Bank, Beverly Hills, California  
 Gold Country National Bank, Brownsville, California  
 North State National Bank, Chico, California  
 North County Bank, Escondido, California  
 Imperial Capital Bank, Glendale, California  
 Foothill Independent Bank, Glendora, California  
 The Bank of Hemet, Hemet, California  
 First Fidelity Thrift and Loan Association, Irvine, California  
 Hewlett Packard Employees FCU, Palo Alto, California  
 Mid Valley Bank, Red Bluff, California  
 North Valley Bank, Redding, California  
 Mechanics Bank of Richmond, Richmond, California  
 Roseville First National Bank, Roseville, California  
 Trans Pacific National Bank, San Francisco, California  
 Bank of the West, San Francisco, California  
 Montecito Bank and Trust, Santa Barbara, California  
 Bank of America Community Development Bank, Walnut Creek, California  
 BYL Bank Group, Yorba Linda, California  
 Nevada State Bank, Las Vegas, Nevada  
 First Bank of Beverly Hills, FSB, Portland, Oregon

**Federal Home Loan Bank of Seattle—District 12**

*Name/City/State*

Bank of Hawaii, Honolulu, Hawaii  
 D.L. Evans Bank, Burley, Idaho  
 Citizens Bank and Trust Company, Big Timber, Montana  
 Bank of Bridger, Bridger, Montana  
 Citizens State Bank of Choteau, Choteau, Montana  
 State Bank and Trust Company, Dillon, Montana  
 First National Bank of Fairfield, Fairfield, Montana  
 Fairview Bank, Fairview, Montana  
 First Security Bank of Malta, Malta, Montana  
 First Citizens Bank of Polson, Polson, Montana  
 First State Bank of Thompson Falls, Thompson Falls, Montana  
 Ruby Valley National Bank, Twin Bridges, Montana  
 First National Bank of the Rockies, White Sulphur Spring, Montana  
 Whitefish Credit Union, Whitefish, Montana  
 O.S.U. Federal Credit Union, Corvallis, Oregon  
 The Merchants Bank, Gresham, Oregon

Community Bank, Joseph, Oregon  
 Valley of the Rogue Bank, Rogue River, Oregon  
 State Employees Credit Union, Salem, Oregon  
 Barnes Banking Company, Kaysville, Utah  
 Cache Valley Bank, Logan, Utah  
 Inter Bank, Duvall, Washington  
 Peoples Bank, Lynden, Washington  
 Pend Oreille Bank, Newport, Washington  
 Inland Northwest Bank, Spokane, Washington  
 Telco Community Credit Union, Tacoma, Washington  
 Clark County School Employees Credit Union, Vancouver, Washington  
 Towne Bank, Woodinville, Washington  
 Norwest Bank Wyoming, N.A., Casper, Wyoming  
 Shosone First Bank, Cody, Wyoming  
 To encourage the submission of public comments on the community support performance of Bank members, on or before April 28, 2000, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 first quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 first quarter review cycle must be delivered to the Finance Board on or before the May 29, 2000 deadline for submission of Community Support Statements.

Dated: April 7, 2000.

By the Federal Housing Finance Board.

**William W. Ginsberg,**

*Managing Director.*

[FR Doc. 00–9137 Filed 4–13–00; 8:45 am]

BILLING CODE 6725–01–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 24, 2000.

**A. Federal Reserve Bank of Atlanta**  
(Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Nacis Joseph Theriot, June Lefebvre Theriot, Nacis John Theriot, and Clara Bell Lefebvre*, all from Cut Off, Louisiana; to acquire additional voting shares of Lafourche Bancshares, Inc., Larose, Louisiana, and thereby indirectly acquire additional voting shares of South Lafourche Bank & Trust Company, Larose, Louisiana.

Board of Governors of the Federal Reserve System, April 10, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-9270 Filed 4-13-00; 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/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 2000.

**A. Federal Reserve Bank of Boston**  
(Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *eOneBanc Corp.*, Manchester, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of First Alliance Bank and Trust, Manchester, New Hampshire.

**B. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Murphy-Payne Investments, Ltd.*, Tyler, Texas; to become a bank holding company by acquiring 47.55 percent of the voting shares of Carthage State Bancshares, Inc., Carthage, Texas; and thereby indirectly acquire First State Bank and Trust Co., Carthage, Texas.

**C. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer

Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Wells Fargo & Company*, San Francisco, California; to acquire 100 percent of the voting shares of National Bancorp of Alaska, Anchorage, Alaska, and thereby acquire National Bank of Alaska, Anchorage, Alaska.

Board of Governors of the Federal Reserve System, April 10, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-9269 Filed 4-13-00; 8:45 am]

BILLING CODE 6210-01-P

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans. No.	Acquiring	Acquired	Entities
<b>TRANSACTIONS GRANTED EARLY TERMINATION—02/14/2000</b>			
20001477 .....	Group Laperriere & Verreault Inc .....	Harnischfeger Industries, Inc., Debtor-in-Possession.	Beloit Corporation.
20001534 .....	Winstar Communications, Inc .....	Wam!Net, Inc .....	Wam!Net, Inc.
20001546 .....	Nortel Networks Corporation .....	Promatory Communications, Inc .....	Promatory Communications, Inc.
20001583 .....	Vivendi, S.A .....	Three V Capital Limited .....	Three V Health, Inc.
20001601 .....	WESCO International, Inc .....	CC America, Inc .....	CC America, Inc.
20001604 .....	Sanmina Corporation .....	Harris Corporation .....	Harris Corporation.
20001608 .....	AT&T Corp .....	SoundDelux Entertainment Group of Delaware, Inc.	SoundDelux Entertainment Group of Delaware, Inc.
20001632 .....	Aon Corporation .....	Gowin Holdings International Limited ...	Gowin Holdings International Limited.
20001641 .....	Emerson Electric Company .....	Telefonaktiebolaget L M Ericsson .....	Automatic Systems Manufacturing Ltd. Ericsson Components AB.
20001648 .....	Alberto-Culver Company .....	Corner J. Cottrell .....	Pro-Line Corporation.
20001658 .....	Citigroup, Inc .....	State Street Corporation .....	State Street Corporation.
20001662 .....	State Street Corporation .....	Citigroup, Inc .....	Citigroup, Inc.

Trans. No.	Acquiring	Acquired	Entities
20001669 .....	Galileo International, Inc .....	The Trip.com, Inc .....	The Trip.com, Inc.
20001691 .....	CNET, Inc .....	mySimon Inc .....	mySimon Inc.
20001696 .....	UST Inc .....	Magoon Brothers, Limited .....	Guenoc Winery, Inc.
20001697 .....	MJD Communications, Inc .....	Peoples Mutual Telephone Company ..	Peoples Mutual Telephone Company.
20001698 .....	Tyco International Ltd .....	ITT Industries, Inc .....	GaAsTEK Division.
20001700 .....	Thomas Everist .....	MDU Resources Group, Inc .....	MDU Resources Group, Inc.
20001701 .....	MDU Resources Group, Inc .....	Thomas Everist .....	Connolly-Pacific Co.
20001704 .....	RCN Corporation .....	21st Century Telecom Group, Inc .....	21st Century Telecom Group, Inc.
20001708 .....	Flowers Industries, Inc .....	Dr. Bettina Behlsen and Mr. Huberus Bahlsen.	BDH, Inc.
20001709 .....	HON Industries, Inc .....	Philip T. Mercer .....	American Fireplace Company, Health & Home, Inc.
20001714 .....	ST Microelectronics N.V .....	8X8, Inc .....	8X8, Inc.
20001715 .....	Conning Capital Partners V, L.P .....	Intek Information, Inc .....	Intek Information, Inc.
20001733 .....	Grupo Carso, S.A. de C.V .....	CompUSA Inc .....	CompUSA Inc.
20001735 .....	Norsk Hydro ASA .....	Gibbons, Goodwin, van Amerongen ...	Wells Aluminum Corporation.
20001739 .....	HA-LO Industries, Inc .....	Starbelly.com, Inc .....	Starbelly.com, Inc.
20001740 .....	Eric Lefkofsky .....	HA-LO Industries, Inc .....	HA-LO Industries, Inc.
20001741 .....	Bradley Keywell .....	HA-LO Industries, Inc .....	HA-LO Industries, Inc.
20001746 .....	theglobe.com, Inc .....	Yale & Christian Brozen .....	Chips & Bits, Inc., Strategy Plus, Inc.
20001750 .....	Reckson Service Industries, Inc .....	Mitsubishi Estate Co., Ltd .....	Cushman & Wakefield, Inc.
20001751 .....	Affiliated Computer Services, Inc .....	Birch & Davis Holdings, Inc .....	Birch & Davis Holdings, Inc.
20001754 .....	David Litman .....	Barry Diller .....	HRN, Inc.
20001755 .....	Robert Diener .....	Barry Diller .....	HRN, Inc.
20001756 .....	Summit Bancorp .....	MSFG, Inc .....	MSFG, Inc.
20001757 .....	Royster-Clark Group, Inc .....	Waterfield Holdings, Inc. (Debtor-in-possession).	Waterfield Holdings, Inc., (Debtor-in-possession).
20001758 .....	Softbank Corp .....	DoveBid, Inc .....	DoveBid, Inc.
20001761 .....	SBR, Inc .....	SMI Holdings, Inc .....	SMI Holdings, Inc.
20001765 .....	TPG Partners III, L.P .....	Gemplus International S.A .....	Gemplus International S.A.
20001775 .....	American Plumbing & Mechanical, Inc .....	Lloyd C. Smith .....	LDI Heating & Air Conditioning. LDI Mechanical.
20001776 .....	Wakenfern Food Corp .....	William Glazier .....	Lindy Dennis, Inc. Glaizer Supermarkets, Inc.
20001781 .....	Sidney B. DeBoer .....	Robert L. Rice .....	Bob Rice Ford, Inc.
20001783 .....	Hummer Winblad Venture Partners IV, L.P.	Homes.com, Inc .....	Homes.com, Inc.

## TRANSACTIONS GRANTED EARLY TERMINATION—02/15/2000

20001525 .....	Ariba, Inc .....	Tradex Technologies, Inc .....	Tradex Technologies, Inc.
20001565 .....	U.S. Foodservice .....	Daniel R. Pollack .....	Stock Yards Packing Co., Inc.
20001576 .....	Sinclair Broadcast Group, Inc .....	Mr. Edwin L. Edwards .....	WPTT, Inc.
20001639 .....	George G. Beasley .....	Howard & Susan Goldsmith .....	HHH Broadcasting, Inc. HMS Broadcasting, Inc. HMS Broadcasting, Inc. Panamedia Square Realty, Inc. SMH Broadcasting, Inc.
20001707 .....	Barry Diller .....	Precision Response Corporation .....	Precision Response Corporation.
20001712 .....	HON Industries, Inc .....	Ron F. Skoronski .....	Allied Fireside, Inc., Fireplace & Spa, Inc. Madison Fire Place, Inc., The Minocqua Fireplace Company.
20001725 .....	Linsalata Capital Partners Fund III, L.P	George G. Thomas .....	Adorn, Inc. and BWT, Inc.
20001795 .....	United Auto Group, Inc .....	James W. McKee, III .....	Huntersville Motors, Inc.

## TRANSACTIONS GRANTED EARLY TERMINATION—02/16/2000

19991506 .....	Lifespan Corporation .....	Care New England Health System .....	Care New England Health System.
20001621 .....	The Dow Chemical Company .....	Flexible Products Company .....	Flexible Products Company.

## TRANSACTIONS GRANTED EARLY TERMINATION—02/17/2000

20001799 .....	Abbott Laboratories .....	Elan Corporation, plc .....	Elan Pharmaceuticals, Inc.
20001837 .....	Allied Waste Industries, Inc. ....	Republic Services Inc .....	Green Valley Environmental Corp., AAA Disposal of Tenn., Inc. PSI Waste Systems, Inc. Republic Services Group of Pennsylvania Hauling, LLC. York Waste Disposal, Inc.
20001838 .....	Republic Services Inc. ....	Allied Waste Industries, Inc .....	BFI Waste Systems of North America, Inc. Browning-Ferris Industries of Florida, Inc.

Trans. No.	Acquiring	Acquired	Entities
			Browning-Ferris Industries of Florida, Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—02/18/2000**

20001515 .....	Oglebay Norton Company .....	Michigan Limestone Operations Limited Partnership.	Michigan Limestone Operations Limited Partnership.
20001653 .....	CRH plc .....	The Shelly Company .....	The Shelly Company.

**TRANSACTIONS GRANTED EARLY TERMINATION—02/22/2000**

20001603 .....	Fresenius Aktiengesellschaft .....	Morrell M. Avram, M.D .....	AFMSM, Inc.
20001649 .....	GlobeSpan, Inc .....	PairGain Technologies, Inc .....	PairGain Technologies, Inc.
20001705 .....	Wallace N. Hersom .....	Power-One, Inc .....	Power-One, Inc.
20001771 .....	KKR 1996 Fund, L.P .....	DPL, Inc .....	DPL, Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—02/23/2000**

20001496 .....	Pharmacia & Upjohn, Inc .....	Novo Nordisk A/S .....	Novo Nordisk Pharmaceutical, Inc.
20001610 .....	Harman International Industries, Incorporated.	Crown International, Inc .....	Crown International, Inc.
20001611 .....	Banco Santander Central Hispano, S.A	Merrill Lynch & Co., Inc .....	Merrill Lynch, Pierce, Fenner & Smith Incorporated.
20001637 .....	Teleflex Incorporated .....	John H. Golden .....	Medical Marketing Group, Inc.
20001646 .....	Telstra Corporation Ltd .....	Extant, Inc .....	Extant, Inc.
20001655 .....	Diagnostic Clinic Medical Group, Inc ...	Caremark RX, Inc .....	Caremark RX, Inc.
20001671 .....	Kenneth R. Thomson .....	Sylvan Learning Systems, Inc .....	Prometric, Inc.
20001688 .....	SBC Communications Inc .....	SBC Communications Inc .....	Texas/Illinois Cellular Limited Partnership.
20001737 .....	Workflow Management, Inc .....	Robert A. Houston Trust .....	Office Electronics, Inc., Houston Real Estate, Inc.
20001743 .....	Calpine Corporation .....	IDACORP, Inc .....	Hemiston Power Partnership.
20001744 .....	Calpine Corporation .....	TransCanada Pipelines Limited .....	Hemiston Power Partnership.
20001747 .....	Harald Quandt Beteiligungen GmbH & Co.	AGIV Aktiengesellschaft .....	Carl Schenck AG.
20001759 .....	Schneider National, Inc. Voting Trust ...	Michael A. Regan .....	Tranzact Systems, Ltd.
20001772 .....	RWE Aktiengesellschaft .....	MCN Energy Group Inc .....	MCNIC CSG Pipeline Company.
20001774 .....	Newell Rubbermaid Inc .....	Alan S. Tweed .....	Shur-Line, Inc.
20001777 .....	Schottenstein Stores Corporation .....	Filene's Basement Corporation (debtor-in-possession).	Filene's Basement Corporation (debtor-in-possession).
20001778 .....	Liberate Technologies .....	Source Media, Inc .....	SourceSuite LLC.
20001779 .....	Liberate Technologies .....	Insight Communications Company, Inc	SourceSuite LLC.
20001787 .....	Greteg Imaging Holding AG .....	Sienna Imaging, Inc .....	Sienna Imaging, Inc.
20001788 .....	Pequot Partners Fund, L.P .....	FutureLink Corp .....	FutureLink Corp.
20001790 .....	Pequot International Fund, Inc .....	FutureLink Corp .....	FutureLink Corp.
20001792 .....	General Motors Corporation .....	Pacific Union Real Estate Group, Ltd ..	Pacific Union Real Estate Group, Ltd.
20001794 .....	David L. Epstein .....	Barry Diller .....	USA Networks, Inc.
20001800 .....	Source Media, Inc .....	Liberate Technologies .....	Liberate Technologies.
20001801 .....	Insight Communications Company, Inc	Liberate Technologies .....	Liberate Technologies.
20001802 .....	ITOCHE Corporation .....	Robert A. Kolikof .....	Prudential Metal Supply Corp.
20001803 .....	Jeffrey H. Smulyan .....	The Walt Disney Company .....	Los Angeles Magazine Holding Company, Inc.
20001807 .....	Kenneth Adelman .....	Nokia Corporation .....	Nokia Corporation.
20001808 .....	David Kashtan .....	Nokia Corporation .....	Nokia Corporation.
20001813 .....	Amazon.com, Inc. ....	living.com Inc .....	living.com Inc.
20001816 .....	Landmark Communications, Inc .....	Litton Industries, Inc .....	WSI Corporation.
20001819 .....	Welsh, Carson, Anderson & Stowe VIII, L.P.	Bridge Information Systems, Inc .....	SAVVIS Communications Corporation.
20001820 .....	Minnesota Mining and Manufacturing Company.	Polaroid Corporation .....	Polaroid Corporation.
20001824 .....	North Castle Partners II, L.P .....	Saratoga Beverage Group, Inc .....	Saratoga Beverage Group, Inc.
20001825 .....	HMTF Bridge Partners, L.P .....	Viatel, Inc .....	Viatel, Inc.
20001826 .....	Science Applications International Corporation.	ODS Networks, Inc .....	ODS Networks, Inc.
20001827 .....	Bracknell Corporation .....	Sunbelt Integrated Trade Services, Inc	Sunbelt Integrated Trade Services, Inc.
20001828 .....	The Rank Group Plc .....	Pioneer Corporation .....	Pioneer Video Manufacturing, Inc.
20001832 .....	Amer Group Ltd .....	Ray DeMarini .....	DeMarini Sports, Inc.
20001834 .....	Crown Group, Inc .....	JELD-WEN, Inc. ....	West One Automotive Group, Inc.
20001835 .....	Craig McCaw .....	Concentric Network Corporation .....	Concentric Network Corporation.

**TRANSACTIONS GRANTED EARLY TERMINATION—02/24/00**

20001629 .....	ValueClick, Inc .....	ValueClick, Inc .....	ValueClick, Inc.
20001630 .....	DoubleClick, Inc .....	DoubleClick, Inc .....	DoubleClick, Inc.
20001679 .....	Omaha World-Herald Company .....	Joe R. Seacrest Children Irevocable Trust, Dec. 26, 1985.	Western Publishing Co.

Trans. No.	Acquiring	Acquired	Entities
20001734 .....	Clariant AG .....	BTP plc .....	BTP plc.
20001766 .....	Accel V L.P. ....	AlphaBlox Corporation .....	AlphaBlox Corporation.
20001789 .....	Pequot Private Equity Fund II, L.P. ....	FutureLink Corp .....	FutureLink Corp.
20001793 .....	Birdsong Corporation .....	ED & F Man Group plc .....	Farmers Fertilizer & Miller Company, Inc.
20001797 .....	Madison Dearborn Capital Partners III, L.P. ....	Dr. Ashok K. Thareja .....	OrbLynx, Inc.
20001805 .....	Warren A. Hood, Jr. ....	Bonar International S.A .....	Bonar Inc.
20001841 .....	Elaso Energy Partners, L.P .....	El Paso Energy Corporation .....	El Paso Intrastate Alabama Pipeline.
20001845 .....	BroadVision, Inc .....	Interleaf, Inc .....	Interleaf, Inc.
20001846 .....	Code, Hennessy & Simmons IV, L.P. ....	PNC Bank Corp .....	Cerex Advanced Fabrics, L.P.
20001848 .....	Arch Chemicals, Inc. ....	Wacker-Chemie GmbH (a German company) .....	Wacker-Chemie GmbH (a German company).
20001849 .....	Critical Path, Inc. ....	RemarQ Communities, Inc .....	RemarQ Communities, Inc.
20001850 .....	Omnicom Group Inc. ....	Bernard Swain .....	Washington Speakers Bureau, Inc.
20001851 .....	Omnicom Group Inc. ....	Harry Rhoads, Jr .....	Washington Speakers Bureau, Inc.
20001852 .....	Paul G. Allen .....	Falcon/Capital Cable Partners, L.P .....	Falcon/Capital Cable Partners, L.P.
20001859 .....	Vattern Industrier AB .....	CMI Industries, Inc .....	Chatham Borgstena, Inc.
20001860 .....	William P. Stiritz .....	Ogden Corporation .....	CMI Industries, Inc.
20001864 .....	Thoma Cressey Fund VI, L.P. ....	Thomas J. Chisholm .....	Ogden Fairmont Inc.
20001868 .....	Colony Investors IV, L.P. ....	FirstWorld Communications, Inc .....	Voice Integrators, Inc.
20001876 .....	TPG Partners III, L.P. ....	FirstWorld Communications, Inc .....	FirstWorld Communications, Inc.
20001877 .....	T3 Partners, L.P. ....	FirstWorld Communications, Inc .....	FirstWorld Communications, Inc.
20001943 .....	Footstar Inc. ....	Just For Feet, Inc., debtor-in-possession. ....	FirstWorld Communications, Inc.
20001753 .....	Parlex Corporation .....	Cookson Group plc .....	Just For Feet of Nevada, Inc., SNKR-Stadium Inc.
20001762 .....	Brian L. Roberts .....	TGC, Inc .....	Just For Feet of Texas, Inc., Just For Feet Specialty Stores.
20001786 .....	Trelleborg AB .....	Invensys plc .....	Sneaker Holdings Corp. Athletic Attic Marketing, Inc.

## TRANSACTIONS GRANTED EARLY TERMINATION—02/28/2000

20001337 .....	The DII Group, Inc. ....	Hewlett-Packard Company .....	Hewlett-Packard Company.
20001727 .....	Aur Resources Inc. ....	Cambior Inc .....	Cambior Inc.
20001729 .....	M. Francois Pinault .....	Charles M. Steiner .....	Adaryan Co.
20001732 .....	Charterhouse Equity Partners III, L.P. ....	Gretchen Artig-Swomley .....	Branch Electric Supply Co., Inc.
20001764 .....	ViaSat, Inc. ....	Scientific-Atlanta, Inc .....	Branch Group, Inc.
20001811 .....	Mohr, Davidow Ventures IV, L.P. ....	AlphaBlox Corporation .....	Soft Link, Inc.
20001815 .....	Bruce R. Katz .....	Prospero Technologies Corporation .....	Scientific-Atlantic, Inc.
20001822 .....	PECO Energy Company .....	Viits Networks Group, Inc .....	AlphaBlox Corporation.
20001823 .....	VTech Holdings Limited .....	AT&T Corp .....	Prospero Technologies Corporation.
20001831 .....	Newcourt Rail, L.L.C. ....	The Howard Gillman Foundation, Inc .....	Viits Networks Group, Inc.
20001836 .....	Citigroup Inc. ....	Schroders plc .....	AT&T Corp.
20001862 .....	Brian L. Roberts .....	Richard Treibick .....	St. Mary's Railroad Corporation.
20001870 .....	Frontenac VII Limited Partnership .....	Robert Ben .....	Schroder & Co. Inc.
20001873 .....	Delco Remy International, Inc. ....	M&M Knopf Auto Parts, Inc .....	Alexcom Limited Partnership.
20001875 .....	Andrx Corporation .....	Valmed Pharmaceutical, Inc .....	System Technology Associates, Inc.
20001878 .....	AT&T Corp. ....	Cable Communications Cooperative of Palo Alto, Incorporated. ....	M&M Knopf Auto Parts, Inc.
20001880 .....	Hicks, Muse, Tate & Furst Equity Fund III, L.P. ....	Hicks, Muse, Tate & Furst Equity Fund II, L.P. ....	Valmed Pharmaceutical, Inc.
20001881 .....	Code, Hennessy & Simmons III, L.P. ....	Douglas D. Cline .....	Cable Communications Cooperative of Palo Alto, Incorporated.
20001882 .....	RNG Group Inc. ....	Mr. Peter Frank .....	Wirekraft Industries, Inc.
20001883 .....	LHH Corporation .....	Manhattan Eye, Ear and Throat Hospital. ....	Midland Delivery Service, Inc.
20001885 .....	Bracknell Corporation .....	Inglett & Stubbs, Inc .....	Midland Holding Company.
20001886 .....	Citadel Communications Corporation .....	Media/Communications Partners III, Limited Partnership. ....	Patterson Street Gulf Service, Inc.
20001889 .....	Adecco SA .....	Anthony J. Petullo, Jr .....	Ten Hoeve Bros., Inc.
20001890 .....	Intel Corporation .....	Ambient Technologies, Inc .....	Manhattan Eye, Ear and Throat Hospital.
20001891 .....	Michael J. Fitzpatrick .....	JDS Uniphase Corporation .....	Inglett & Stubbs, Inc.
20001895 .....	UGI Corporation .....	All Star Gas Corporation .....	Bloomington Broadcasting Holdings, Inc.
			Olsten of Milwaukee, Inc.
			Ambient Technologies, Inc.
			JDS Uniphase Corporation.
			All Star Gas, Inc. of California.
			All Star Gas, Inc. of Idaho.
			All Star Gas, Inc. of Nevada.
			All Star Gas, Inc. of Oregon.

Trans. No.	Acquiring	Acquired	Entities
20001897 .....	Centre Capital Investors III, L.P. ....	Paxar Corporation .....	All Star Gas, Inc. of Washington.
20001899 .....	Sanjay Subhedar .....	JDS Uniphase Corporation .....	International Imaging Materials, Inc.
20001900 .....	Ming Shih .....	JDS Uniphase Corporation .....	JDS Uniphase Corporation.
20001908 .....	SDL, Inc. ....	Veritech Microwave, Inc .....	JDS Uniphase Corporation.
20001910 .....	Molex Incorporated .....	Axsys Technologies, Inc .....	Veritech Mirowave, Inc.
20001940 .....	Sybron International Corporation .....	SeraCare, Inc .....	Axsys Technologies, Inc.
20001985 .....	CVC European Equity Partners II, L.P.	Ronald O. Perelman .....	SeraCare Technology, Inc.
			Femodyl Professionals Inc.
20001998 .....	CVC European Equity Partners II, L.P.	Beauty Care Professional Products Participations SA.	Mafco Holdings, Inc.
			Roux Laboratories, Inc.
			Beauty Care Professionals Products Participations SA.

**TRANSACTIONS GRANTED EARLY TERMINATION—02/29/2000**

20001914 .....	Dycom Industries, Inc. ....	Daniel B. Fugal .....	Neils Fugal Sons Company.
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**TRANSACTIONS GRANTED EARLY TERMINATION—03/01/2000**

20000901 .....	American Greeting Corporation .....	Egreetings Network, Inc .....	Egreetings Network, Inc..
20000903 .....	American Greetings Corporation .....	Gibson Greetings, Inc .....	Gibson Greetings, Inc.
20001798 .....	Ascot plc .....	Dr. Bob G. Gower .....	Specified Fuels & Chemicals, LLC.
20001915 .....	Dycom Industries, Inc. ....	Guy L. Fugal .....	Neils Fugal Sons Company.
20001916 .....	Daniel B. Fugal .....	Dycom Industries, Inc .....	Dycom Industries, Inc.
20001917 .....	Guy L. Fugal .....	Dycom Industries, Inc .....	Dycom Industries, Inc.
20001986 .....	Fabri-Steel Products Incorporated .....	Charles R. Russell, Jr .....	Progressive Stamping Co., Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/02/2000**

20001839 .....	American General Corporation .....	Berkshire Fund IV, Limited Partnership	Cypress Tree Asset Management Corporation, Inc.
20001937 .....	The Washington Post Company .....	Eugene C. Pullam Trust .....	Cypress Tree Funds Distributors, Inc.
20001974 .....	Private Equity Investor, III, L.P .....	Nationwide Formalwear, Inc .....	Central Newspapers, Inc.
			Nationwide Formalwear, Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/03/2000**

20001736 .....	Monitor Clipper Equity Partners, L.P ....	Robert Kashan .....	Earth Color Group, Inc.
20001809 .....	LMR Protector Limited .....	Alterra Healthcare Corporation .....	Alterra Healthcare Corporation.
20001810 .....	Allied Waste Industries, Inc .....	Laurel Mountain Partners Investments II, LLC.	GEK, Inc.
20001812 .....	CBS Corporation .....	Peter J. Callhan .....	Palm Beach Radio Broadcasting, Inc.
20001821 .....	Consolidated Edison, Inc. ....	NorthEast Optic Network, Inc .....	NEON Communications, Inc.
20001887 .....	Quanex Corporation .....	Lincolnshire Equity Fund, L.P .....	Imperial Products, Inc.
20001901 .....	Internet Capital Group, Inc. ....	Universal Access, Inc .....	Universal Access, Inc.
20001902 .....	Compagnie de Saint-Gobain .....	Meyer International PLC .....	Meyer International PLC.
20001912 .....	Cardinal Health, Inc .....	Nestle S.A .....	Alcon (Puerto Rico) Inc.
20001918 .....	GTCR Fund VII L.P .....	Synagro Technologies, Inc .....	Synagro Technologies, Inc.
20001923 .....	Taiwan Aerospace Corporation .....	Sino-Aerospace Investment Corporation.	Sino Swearingen Aircraft Corporation.
20001924 .....	Yao-Hwa Glass Company Ltd., Management Commission.	Sino-Aerospace Investment Corporation.	Sino Swearingen Aircraft Corporation.
20001930 .....	Claudio Lucchese .....	The Siam Cement Public Co. Ltd .....	TileCera Distributing, Inc.
20001931 .....	Richard Treibick .....	USN Communications, Inc. (Debtor-in-Possession).	TileCera, Inc.
20001932 .....	Paul G. Allen .....	Stamps.com Inc .....	USN Communications, Inc. (Debtor-in-Possession).
20001933 .....	Symantec Corporation .....	L-3 Communications Holdings, Inc .....	Encryp Tix, Inc.
20001939 .....	Swedish Match AB .....	General Cigar Holdings, Inc .....	L-3 Communications Network Security Systems, L.L.C.
20001948 .....	Anthem Insurance Companies, Inc .....	Associated Hospital Service of Maine ..	General Cigar Holdings, Inc.
20001949 .....	Fremont Partners, L.P .....	Edward J. Wroble .....	Associated Hospital Service of Maine.
20001950 .....	Fremont Partners, L.P .....	Gene G. Petrie .....	Software Architects Training Company.
20001954 .....	Paul G. Allen .....	The Times Mirror Company .....	Software Architects, Inc.
20001960 .....	American International Group, Inc .....	Perini Corporation .....	Software Architects, Inc.
20001963 .....	Swiss Reinsurance Company .....	PennCorp Financial Group, Inc. debtor-in-possession.	The Sporting News.
20001969 .....	VIAG AG .....	Cott Corporation .....	Perini Corporation.
20001970 .....	Rhone Capital LLC .....	Testamentary Trust or Robert E. Richardson.	Security Life and Trust Insurance Co./Southwestern Life Co.
20001972 .....	Microsoft Corporation .....	T1MSN .....	BCB USA Corp.
20001973 .....	Telefonos de Mexico, S.A. de C.V. ....	T1MSN .....	University Swaging, Inc.
20001981 .....	Mr. Lance Fors .....	PE Corporation .....	T1MSN.
20001982 .....	Wells Fargo & Company .....	Douglas Furniture of California, Inc .....	T1MSN.
20001983 .....	Smiths Industries plc .....	Douglas C. and Betty L. Sampson .....	PE Corporation.
20001984 .....	Textron Inc. ....	Safeguard Scientifics, Inc .....	Douglas Furniture of California, Inc.
			Florida RF Labs, Inc.
			Safeguard Scientifics, Inc.

Trans. No.	Acquiring	Acquired	Entities
20001987 .....	Rudiger Baeres .....	SightSound.com Incorporated .....	SightSound.com Incorporated.
20001989 .....	Brockway Moran & Partners Fund, L.P. ....	Dal D. Rogers .....	High Tech West, Inc.
20001992 .....	National Grape Cooperative Association, Inc. ....	General Electric Company .....	MEP II LLC.
20002001 .....	White Mountains Insurance Group, Ltd. ....	Risk Capital Holdings, Inc .....	Risk Capital Reinsurance Company.
20002003 .....	William H. Dunn .....	R.J. Griffith, Jr .....	R.J. Griffith & Company.
20002006 .....	Landry's Seafood Restaurants, Inc .....	Rainforest Cafe, Inc .....	Rainforest Cafe, Inc.
20002013 .....	HMTF Equity Fund IV (1999), L.P. ....	Rhythms NetConnections Inc .....	Rhythms NetConnections Inc.
20002014 .....	HMTF Bridge Partners, L.P. ....	Rhythms NetConnections Inc .....	Rhythms NetConnections Inc.
20002016 .....	Summit/DPC Partners, L.P. ....	Doane Pet Care Enterprises, Inc .....	Doane Pet Care Enterprises, Inc.
20002022 .....	Jupiter Partners LLC .....	Central Vermont Public Service Corp ..	The HomeServiceStore.com.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/06/2000**

20001791 .....	Solvay S.A .....	Allied Industrial Group, Inc .....	Chemtech Products, Inc.
20001964 .....	ATI Technologies, Inc .....	ArtX, Inc .....	ArtX, Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/07/2000**

20002039 .....	EM.TV & Merchandising AG .....	The Jim Henson Company, Inc .....	The Jim Henson Company, Inc.
20002060 .....	The Bank of New York Company, Inc ..	Bank of Montreal .....	Harris Bankcorp Inc. Harris Bankcorp Inc.
20002099 .....	MBNA Corporation .....	Comerica Incorporated .....	Comerica Bank, Comerica Bank, National Association. Comerica Bank—California, Comerica Bank—Texas.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/08/2000**

20002083 .....	The Lubrizol Corporation .....	RPM, Inc .....	Alox Corporation. Alox of Delaware, Inc.
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**TRANSACTIONS GRANTED EARLY TERMINATION—03/09/2000**

20001830 .....	Reckson Service Industries, Inc. ....	HQ Global Workplaces, Inc .....	HQ Global Workplaces, Inc.
20001840 .....	Motorola, Inc. ....	Communication Systems Technology, Inc. ....	Communication Systems Technology, Inc.
20001855 .....	Ray C. Anderson .....	CMI Industries, Inc .....	CMI Industries, Inc.
20001856 .....	CMGI, Inc. ....	divine interVentures, Inc .....	divine interVentures, Inc.
20001857 .....	divine interVentures, Inc. ....	CMGI, Inc .....	CMGI, Inc.
20001903 .....	Hoya Corporation .....	Mathias E. Schmidt-Wetekan .....	Optical Resources Group, Inc.
20001905 .....	Holy Cross Health System Corporation ..	St. Mary Hospital of Livonia .....	St. Mary Hospital of Livonia.
20001906 .....	Quanta Services, Inc. ....	Utilities Construction Co., Inc. of South Carolina. ....	Utilities Construction Co., Inc. of South Carolina.
20001911 .....	Microsoft Corporation .....	Travelscape.com .....	Travelscape.com.
20001921 .....	Holy Cross Health System Corporation ..	Mercy Health Services .....	Mercy Health Services.
20001922 .....	GenRad, Inc. ....	Thermo Electron Corporation .....	Sierra Research and Technology, Inc.
20001925 .....	Bracknell Corporation .....	Robert Allen and Vicki Sue Schmidt (husband and wife). ....	Schmidt Electric Company, Inc.
20001941 .....	Hellman & Friedman Capital Partners IV L.P. ....	Kenneth R. Thomson .....	The Thomson Company, Inc.
20001947 .....	Microsoft Corporation .....	VacationSpot.com, Inc .....	VacationSpot.com, Inc.
20001967 .....	NACCO Industries, Inc. ....	Joseph G. Wheeler .....	Yale Carolinas, Inc.
20001971 .....	Anthony Gartland .....	Sun Microstamping, Inc .....	Sun Microstamping, Inc.
20001976 .....	Akamai Technologies, Inc. ....	InterVU Inc .....	InterVU Inc.
20001980 .....	Dentsu Inc. ....	BDM, Inc. Voting Trust .....	BDM, Inc.
20001990 .....	Brockway Moran & Partners Fund, L.P. ....	Tom D. Rogers .....	High Tech West, Inc.
20001994 .....	Jack D. Hightower .....	Unocal Corporation .....	Pure Energy Resources, Inc.
20002021 .....	HMTF Equity Fund IV (1999), L.P. ....	Metrocall, Inc .....	Metrocall, Inc.
20002023 .....	Catholic Health East .....	SPHS Corporation .....	Saint Joseph of the Pines, Inc.
20002026 .....	Daniel Green Company .....	John R. Riedman .....	Penobscot Shoe Company.
20002029 .....	White Mountains Insurance Group, Ltd. ....	Humana Inc .....	PCA Property and Casualty Insurance Company.
20002030 .....	North Castle Partners II, L.P. ....	Terrence J. Lemerond .....	Enzymatic Therapy, Inc.
20002055 .....	ECl Telecom Ltd. ....	Hubbell Incorporated .....	Pulse Communications, Inc.
20002134 .....	AT&T Corp. ....	GRC International, Inc .....	GRC International, Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/10/2000**

20000748 .....	Gannett Co., Inc. ....	Joseph Lewis Allbritton .....	Allbritton Jacksonville, Inc. WJXX Licensee Inc.
20001847 .....	Finlay Enterprises, Inc .....	Jay B. Rudolph, Inc .....	Jay B. Rudolph, Inc.
20001927 .....	Bain Capital Fund VI, L.P. ....	VDI Multimedia, Inc .....	VDI Multimedia, Inc.
20001928 .....	Medical Manager Corporation .....	Medical Manager Corporation .....	The Health Information Network Connection.
20001934 .....	Verior Inc .....	CIBER, Inc .....	Agilera.com, Inc.

Trans. No.	Acquiring	Acquired	Entities
20001935	Leap Wireless International, Inc	Anthony R. Chase	Chase Telecommunications Holdings, Inc.
20001938	Eugene C. Pulliam Trust	The Washington Post Company	BrassRing, Inc.
20001968	BCE Inc	United Payors & United Providers Inc	United Payors & United Providers Inc.
20001993	AT&T Corp	Metrocall, Inc	Metrocall, Inc.
20002004	Bitten og Mads Clausens Fond	Danfoss Murmann Holoding A/S	Danfoss Murmann Holding A/S.
20002009	Edward S. Rogers	Andre' Chagnon	Le Groups Videotron Ltee.
20002020	HMTF Bridge Partners, L.P.	Metrocall, Inc	Metrocall, Inc.
20002024	BATM Advanced Communications, Limited.	World Access, Inc	Telco Systems, Inc.
20002031	VerticalNet, Inc	Peter LeSaffre	R. W. Electronics, Inc.
20002032	VerticalNet, Inc	Robert R. Benedict	R. W. Electronics, Inc.
20002033	Peter L. LeSaffre	VerticalNet, Inc	VerticalNet, Inc.
20002041	Cisco Systems, Inc	Growth Networks Inc	Growth Networks Inc.
20002046	Messer Industrie Gesellschaft mbH	Aventis S.A	MG Systems.
20002048	GS Capital Partners III, L.P.	ProMedCo Management Company	ProMedCo Management Company.
20002050	Benchmark Capital Partners, II, L.P.	Critical Path, Inc	Critical Path, Inc.
20002051	Benchmark Founders, Fund II, L.P.	Critical Path, Inc	Critical Path, Inc.
20002052	The Manitowoc Company, Inc	Multiplex Company, Inc	Multiplex Company, Inc.
20002058	Oliver Isaac	George M. Hofmeister	American Commercial Steel, Inc.
20002061	Zebra Technologies Corporation	Alfred J. Petteruti	Comtec Information Systems, Inc.
20002063	The Titan Corporation	Dr. William C. Lindsey	William C. Lindsey, Inc. (d/b/a LinCom Corporation).
20002064	Deutsche Post AG	Robert J. Mitzman	Q International Couier, Inc.
20002068	Clayton Dubilier & Rice Fund VI Limited Partnership.	Clayton, Dubilier & Rice Fund V Limited Partnership.	Kinko's and Kinkos.com.
20002069	America Online, Inc	Clayton, Dubilier & Rice Fund V Limited Partnership.	Kinko's and Kinkos.com.
20002073	Capital Z Financial Services Fund II, L.P.	Trading Edge, Inc	Trading Edge, Inc.
20002075	Union Planters Bank, National Association.	Whitney Equity Partners, L.P	Strategic Outsourcing, Inc.
20002077	H.J. Heinz Company	Junki Yoshida	Yoshida Food Products Co. L.P.
20002078	Autoliv, Inc	NSK Ltd.	NSK Safety Technology, Inc.
20002082	United Auto Group, Inc	Declaration of Trust of James G. Pilla	Motorcars East, Inc. Motorcars Infiniti, Inc. Motorcars West, Inc.
20002088	AT&T Corp	Ascent Entertainment Group, Inc	Ascent Entertainment Group, Inc.
20002090	USANI, LLC	Styleclick.com, Inc	Styleclick.com, Inc.
20002092	Internet Capital Group, Inc	Onvia.com, Inc	Onvia.com, Inc.
20002093	Elisabeth Badinter	Fallon Group, Inc	Fallon Group, Inc.
20002094	SBC Communications Inc	Sterling Commerce, Inc	Sterling Commerce, Inc.
20002102	AT&T Corp	Dow Jones & Company, Inc	Dow Jones & Company, Inc.
20002103	Dow Jones & Company, Inc	AT&T Corp	@Home. DJC.
20002107	Internet Capital Group, Inc	eCredit.com, Inc	eCredit.com, Inc.
20002110	Peregrine Systems, Inc.	Telco Research Corporation Limited	Telco Research Corporation Limited.
20002111	Service Corporation International	Memorial Operations Company	Provident Servcies, Inc.

## TRANSACTIONS GRANTED EARLY TERMINATION—03/13/2000

20001644	Eaton Corporation	Honeywell International, Inc	Grimes Aerospace Company.
20002125	Chesapeake Corporation	Green Printing Company, Inc. Employee Stock Ownership Plan.	Green Printing Company, Inc.
20002140	Billing Concepts Corp	Donald C. Licciardello	Princeton eCom Corporation.
20002142	Christopher E. Edgecomb	World Access, Inc	World Access, Inc.
20002146	Salah M. Hassanein	AT&T Corp	AT&T Corp.
20002151	AT&T Corp	Crown Media Holdings, Inc	Crown Media Holdings, Inc.
20002154	Red Robin International Inc., a Nevada Corporation.	The Snyder Group Company, a Delaware Corporation.	The Snyder Group Company, a Delaware Corporation.
20002157	Phone.com, Inc	Onebox.com, Inc	Onebox.com, Inc.
20002158	Young & Rubicam Inc	Robinson Lerer & Montgomery, LLC	Robinson Lerer & Montgomery, LLC.
20002162	Triumph Group, Inc	Roger W. Blanchard	ACR Industries, Inc.
20002165	Mackie Designs Inc	Evelyn Berger	Eastern Acoustic Works, Inc.
20002168	Rexall Sundown, Inc	David J. McCabe	Worldwide Sports Nutritional Supplements, Inc.
20002169	Stichting Administratiekantoor ABN AMRO Holding.	Bank One Corporation	American National Bank & Trust Company.
20002170	EnergyUnited Electric Membership Corporation.	All Star Gas Corporation	All Star Gas Corporation.
20002173	Chase Manhattan Corporation	Crown Media Holdings, Inc	Crown Media Holdings, Inc.
20002175	JDA Software Group, Inc	Pricer AB	Intactix International.
20002177	Warburg, Pincus Equity Partners, L.P.	Gerald W. Schwartz	insLogic.com Holding Corporation.
20002180	CMGI, Inc.	Tallan, Inc	Tallan, Inc.

Trans. No.	Acquiring	Acquired	Entities
20002181 .....	Beacon Group Energy Investment Fund II, L.P.	Capstone Turbin Corporation .....	Capstone Turbine Corporation.
20002182 .....	Vitro, S.A. de C.V.	SunSource, Inc .....	Harding Glass, Inc.
20002191 .....	Thayer Equity Investors IV, L.P.	A.B. Holdings, LLC .....	EnterpriseWorks, LLC.
20002195 .....	John Swire & Sons Limited .....	Coca-Cola Bottling Company of Ogden	Coca-Cola Bottling Company of Ogden.
20002197 .....	Dan River Inc.	Nicholas Papaley .....	Import Specialists, Inc.
20002200 .....	Alpha Industries, Inc.	Network Device, Inc .....	Network Device, Inc.
20002206 .....	Ocean Group plc .....	Exel plc .....	Exel plc.
20002219 .....	MBNA Corporation .....	Regions Financial Corporation .....	Regions Bank.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/14/2000**

20001894 .....	Xantrex Technology, Inc. ....	OCM Principal Opportunities Fund, L.P.	Trace Holdings, LLC.
20001977 .....	Shamrock Holdings, Inc. ....	Pacific Dunlop Limited .....	Pacific Dunlop Limited.
20002019 .....	Daniel H. Rosenblum .....	ED & F Man Holdings Limited (Newco)	ED & F Man Holdings Limited (Newco).
20002028 .....	Madison River Telephone Company, LLC.	Coastal Utilities, Inc .....	Coastal Utilities, Inc.
20002034 .....	Aether System, Inc.	Metrocall, Inc .....	Metrocall, Inc.
20002035 .....	Adelphia Communications Corporation	Anverse, Inc .....	Prestige Communications, Inc.
20002049 .....	PSINet, Inc.	Metrocall, Inc .....	Metrocall, Inc.
20002054 .....	Pacific Gateway Exchange, Inc.	Samuel Delug .....	NOS Communications, Inc.
20002207 .....	Iron Mountain Incorporated .....	Stephen M. Suddath .....	NOSVA Limited Partnership. Data Storage Center, Inc. DSC of Florida, Inc. DSC of Massachusetts, Inc.
20002209 .....	Staples, Inc.	BizBuyer.com, Inc. ....	BizBuyer.com, Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/15/2000**

1992349 .....	Alain de Krassny .....	Albright & Wilson plc .....	Albright & Wilson plc.
19992524 .....	Rhone-Poulenc, S.A.	Alain De Krassny .....	Danube Chemicals Acquisition Corporation.
20001919 .....	NatSteel Electronics, Ltd. ....	NEC Corporation .....	NEC America, Inc.
20001979 .....	Leucadia National Corporation .....	Fidelity National Financial, Inc.	Fidelity National Financial, Inc.
20002017 .....	TPG Partners III, L.P.	Mary Pat Link and John D. Strohm .....	Interlink Group, Incorporated.
20002018 .....	T3 Partners, L.P.	Mary Pat Link and John D. Strohm .....	Interlink Group, Incorporated.
20002066 .....	Paul G. Desmarais .....	Aetna Inc .....	Aetna Inc.
20002123 .....	Thayer Equity Investors III, L.P.	ePlus inc .....	ePlus inc.
20002166 .....	Charles W. Ergen .....	Michael Kelly .....	Kelly Broadcasting Systems, Inc.
20002190 .....	Michael Kelly .....	Charles W. Ergen .....	Echostar Communications Corporation.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/16/2000**

20000874 .....	Spectrum Equity Investors II, L.P.	Pathnet Telecommunications, Inc .....	Pathnet Telecommunications, Inc.
20000875 .....	Spectrum Equity Investors, L.P.	Pathnet Telecommunications, Inc .....	Pathnet Telecommunications, Inc.
20000881 .....	Colonial Telecommunications, Inc.	Pathnet Telecommunications, Inc .....	Pathnet Telecommunications, Inc.
20000883 .....	CSX Corporation .....	Pathnet, Inc .....	Pathnet Inc.
20001035 .....	Burlington Northern Santa Fe Corporation.	Pathnet Telecommunications, Inc .....	Pathnet Telecommunications, Inc.
20001942 .....	T3 Partners, L.P.	Gemplus International S.A .....	Gemplus International S.A.
20001944 .....	Maximus, Inc.	David B. Crawford .....	Crawford Consulting, Inc.
20001945 .....	John C. Malone .....	Cendant Corporation .....	Cendant Corporation.
20001959 .....	IWO Holdings, Inc.	Sprint Corporation .....	Sprint Spectrum L.P., Sprint Spectrum Equipment Company, L.P. Sprint Spectrum Realty Company, L.P.
20002053 .....	Pacific Gateway Exchange, Inc.	Robert A. Lichtenstein .....	NOS Communications, Inc. NOSVA Limited Partnership.
20002057 .....	Terayon Communication Systems, Inc.	Tyco International Ltd .....	Tyco International Ltd.
20002059 .....	Nalato AB .....	Shieldmate Robotics, Inc .....	Shieldmate Robotics, Inc.
20002080 .....	Parksite, Inc.	Plunkett-Webster, Inc .....	Plunkett-Webster, Inc.
20002087 .....	Gary L. Wilson .....	Bridgeport Holdings Inc .....	Bridgeport Holdings Inc.
20002128 .....	Gilbert Global Equity Partners, L.P.	Amkor Technology, Inc .....	Amkor Technology, Inc.
20002129 .....	Gilbert Global Equity Partners (Bermuda) L.P.	Amkor Technology, Inc .....	Amkor Technology, Inc.
20002130 .....	AIG Global Emerging Markets Fund, L.L.C.	Amkor Technology, Inc .....	Amkor Technology, Inc.
20002131 .....	AIG Asian Opportunity Fund, L.P.	Amkor Technolgoy, Inc .....	Amkor Technology, Inc.
20002137 .....	Wingate Partners II, L.P. ....	RWE AG .....	REP Environmental Processes, Inc.
20002141 .....	World Access, Inc.	Christopher E. Edgecomb .....	Christopher E. Edgecomb.
20002178 .....	TDK Corporation .....	Headway Technologies, Inc .....	Headway Technologies, Inc.
20002193 .....	Benjamin M. Rosen .....	Capstone Turbine Corporation .....	Capstone Turbine Corporation.

Trans. No.	Acquiring	Acquired	Entities
20002208 .....	The United Company .....	Bebe Selig Burns .....	West End Lumber Company, Inc.
20002216 .....	Roper Industries, Inc. ....	Goerd K. Abel .....	AHC, Inc.
20002220 .....	North Castle Partners II, L.P. ....	Chiquita Brands International, Inc .....	California Day-Fresh Foods, Inc.
20002242 .....	Softbank Corp.	Electron Economy, Inc .....	Electron Economy Inc.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/17/2000**

20001997 .....	Unocal Corporation .....	General Motors Corporation .....	Energy Spectrum-Alberta Hub, Inc.
20002074 .....	The Sherwin-Williams Company .....	General Polymers Corporation .....	General Polymers West, Inc.
20002079 .....	Adsteam Marine Limited .....	Booth Creek Partners Limited IV, LLLP	Northland Holdings, Inc.
20002081 .....	United Auto Group, Inc. ....	Lee G. Seidman .....	Motorcars East, Inc.
			Motorcars Infiniti, Inc.
			Motorcars West, Inc.
20002132 .....	SCP Private Equity Partners II, L.P.	Amkor Technology, Inc .....	Amkor Technology, Inc.
20002135 .....	SAFECO Corporation .....	Concur Technologies, Inc .....	Concur Technologies, Inc.
20002138 .....	Walter-Sutton Media Partners, L.P.	Choice One Communications, Inc .....	Choice One Communications, Inc.
20002144 .....	MSCP III 892 Investors, L.P. ....	Choice One Communications, Inc .....	Choice One Communications, Inc.
20002152 .....	Voting Trust dated December 4, 1968 of v/s of Hallmark Cards.	Crown Media Holdings, Inc .....	Crown Media Holdings, Inc.
20002179 .....	Quantum Industrial Holdings, Ltd.	CuraGen Corporation .....	CuraGen Corporation.
20002275 .....	Prestige Brands International, Inc.	Procter & Gamble Company, (The) .....	The Procter & Gamble Manufacturing Company.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/20/2000**

20001833 .....	Global Employment Solutions, Inc.	TEAM America Corporation .....	TEAM America Corporation.
20002027 .....	Computershare Limited .....	Bank of Montreal .....	Harris Bancorp, Inc., Harris Trust and Savings Bank.
			Harris Trust Company of California.
			Harris Trust Company of New York.
20002036 .....	Adelphia Communications Corporation	Jonathan J. Oscher .....	Prestige Communications of NC, Inc.
20002095 .....	Alta Subordinated Debt Partners III, L.P.	Marshall W. Pragon .....	Pegasus Communications Corporation.
20002096 .....	Alta Communications VI, L.P.	Marshall W. Pagon .....	Pegasus Communications Corporation.
20002097 .....	Spectrum Equity Investors, L.P.	Marshall W. Pagon .....	Pegasus Communications Corporation.
20002098 .....	Spectrum Equity Investors II, L.P.	Skylark Company, Ltd .....	Red Robin International, Inc.
20002139 .....	Quad-C Partners V, L.P. ....	Wine.com, Inc .....	Wine.com, Inc.
20002147 .....	AT&T Corp.	ONEOK, Inc .....	ONEOK Gas Processing, L.L.C.
20002153 .....	El Paso Energy Corporation .....	The Times Mirror Compnay .....	The StayWell Company.
20002174 .....	Vivendi, S.A.	M.F. Hutchinson .....	Hutchinson Automotive Group.
20002185 .....	Asbury Automotive Group, L.L.C.	DoveBid, Inc .....	DoveBid, Inc.
20002192 .....	Fremont Investor, Inc. ....	SBC Communications Inc .....	Ameritech Communications, Inc.
20002196 .....	The William Communications Group, Inc.		
20002199 .....	TRW Inc.	Endgate Corporation .....	Endgate Corporation.
20002214 .....	Reliant Energy, Incorporated .....	Vivendi S.A .....	Sithe Northeast Generating Company, Inc.
20002215 .....	Everett R. Dobson Irrevocable Family Trust.	Lone Star Cellular, Inc .....	Lone Star Cellular, Inc.
20002218 .....	Equity Residential Properties Trust .....	Globe Holding Co., Inc .....	Globe Holding Co., Inc.
20002222 .....	Equifax Inc.	R.L. Polk & Co .....	R.L. Polk & Co.
20002223 .....	Amerada Hess Corporation .....	Den norske stats oljeselskap a.s .....	Statoil Energy Services, Inc.
20002227 .....	Clarica Life Insurance Company .....	Sun Life Assurance Co. of Canada .....	Sun Life of Canada Reinsurance (Bar- bados) Limited.
			Sun Life of Canada Reinsurance (U.S.) Holdings, Inc.
20002231 .....	The Heritage Group .....	Pennzoil-Quaker State Company .....	Pennzoil-Quaker State Company.
20002233 .....	Cenex Harvest States Cooperatives .....	Dakota Valley Mill, LLC .....	Dakota Valley Mill, LLC.
20002245 .....	Advance Group, Inc.	TSG2 L.P .....	Sunburst Products, Inc.
20002247 .....	Tweeter Home Entertainment Group, Inc.	Shelley Miller .....	United Audio Centers, Inc.
20002248 .....	ESCO Electronics Corporation .....	William E. Curran, Sr .....	Lindgren, Inc Inc.
20002250 .....	Ridley Corporation Limited .....	Contigroup Companies, Inc .....	Contigroup Companies Inc.
20002252 .....	Ennis Business Forms, Inc.	Northstar Computer Forms, Inc .....	Northstar Computer Forms, Inc.
20002267 .....	William U. Parfet .....	Monsanto Company .....	Monsanto Company.
20002268 .....	Donald Parfet .....	Monsanto Company .....	Monsanto Company.
20002286 .....	Canadian Occidental Petroleum, Ltd.	Occidental Petroleum Corporation .....	CXY Chemicals U.S.A.

**TRANSACTIONS GRANTED EARLY TERMINATION—03/21/2000**

20001631 .....	i2 Technologies, Inc.	International Business Machines Cor- poration.	International Business Machine Cor- poration.
20001861 .....	James E. Koons .....	Estate of James M. Kline .....	Kline Collision Repair Center, Inc. Kline Imports of Arlington, Inc. Kline Tysons Imports, Inc.

Trans. No.	Acquiring	Acquired	Entities
20002253 .....	SPX Corporation .....	Fenner PLC .....	Fenner PLC.
20002255 .....	SBS Technologies, Inc .....	SDL Communications, Inc .....	SDL Communications, Inc.
20002271 .....	FPL Group, Inc .....	Enron Corporation .....	Lake Benton Power Partners II, LLC.
20002278 .....	Henry J. Bertolon, Jr .....	Gateway, Inc .....	Gateway, Inc.
20002280 .....	Wolters Kluwer nv .....	Harcourt General, Inc .....	Harcourt General, Inc.
20002293 .....	Countrywide Credit Industries, Inc. ....	FirstPlus Financial Group, Inc .....	Western Interstate Bancorp.
20002296 .....	United Auto Group, Inc. ....	Russell J. Dellen .....	Dellen Oldsmobile, Inc.
20002297 .....	Campart S.p.A .....	Montedison S.p.A .....	Montedison S.p.A.
20002305 .....	Everest Re Group, Ltd .....	The Prudential Insurance Company of America.	Gibraltar Casualty Company.
20002309 .....	Brian L. Roberts .....	Netlab L.L.C .....	Online Retail Partners, Inc.
20002310 .....	Bass PLC .....	Bristol Hotels & Resorts .....	Bristol Hotels & Resorts
20002317 .....	Leggett & Platt, Incorporated .....	Gunter & Gloria Preuss (spouses) .....	Genesis Fixtures, Inc.

## TRANSACTIONS GRANTED EARLY TERMINATION—03/22/2000

20002010 .....	Unican Security Systems Ltd .....	Jimmy Hamilton .....	Mas-Hamilton Group, Inc.
20002113 .....	EDO Corporation .....	AIL Technologies Inc .....	AIL Technologies Inc.
20002229 .....	Gerald W. Schwartz .....	Dana Corporation .....	Echlin Inc.
20002236 .....	Mylykoski Corporation .....	OCM Opportunities Fund, L.P.	FSC Corporation

## TRANSACTIONS GRANTED EARLY TERMINATION—03/22/2000

20002056 .....	Medical Manager Corporation .....	Blue Cross and Blue Shield of. ....	Blue Cross and Blue Shield of Massachusetts, Inc.
20002067 .....	Mortgage.com, Inc .....	Openclose.com, Inc .....	Openclose.com, Inc., a Florida Corporation
20002104 .....	Tyco International Ltd .....	The Morgan Crucible Company plc .....	Dulmison Inc.
20002109 .....	BuildNet, Inc .....	NxTrend Technology, Inc .....	NxTrend Technology, Inc.
20002201 .....	Lee Enterprises, Incorporated .....	Midwest Publishing Statutory Trust .....	Midwest Publishing Statutory Trust
20002202 .....	Green Equity Investors II, L.P.	Midwest Publishing Statutory Trust .....	Adrian Access Shopper, Sturgis Journal, The Weekender (TMC) Adrian Daily Reporter, Adrian Medley (TMC) Sturgis Getaway Shopper, Coldwater Daily Reporter The Reporter Extra (TMC), Coldwater Shoppers Guide
20002257 .....	Perot Systems Corporation .....	Mark G. Miller .....	Solutions Consulting, Inc.
20002258 .....	Mark G. Miller .....	Perot Systems Corporation .....	Perot Systems Corporation.
20002260 .....	Reed International P.L.C .....	Endeavor Information Ssystems, Inc .....	Endeavor Information Systems, Inc.
20002261 .....	Elsevier NV .....	Endeavor Information Systems, Inc .....	Endeavor Information Systems, Inc.
20002282 .....	Harcourt General, Inc .....	Harcourt General, Inc .....	M.D. Consult, LLC.
20002298 .....	FFT Partners I, L.P. ....	SICOR, Inc .....	SICOR, Inc
20002300 .....	Marc Ladreit de Lacharriere .....	Duff & Phelps Credit Rating Co .....	Duff & Phelps Credit Rating Co.
20002312 .....	FFT Partners I, L.P .....	Vectis Corporation .....	Vectis Corporation.
20002313 .....	Vectis Corporation .....	Telesis Medical Management, Inc .....	Telesis Medical Management, Inc.
20002318 .....	N.V. Bekaert S.A .....	United Solar Systems Corp .....	United Solar Systems Corp.
20002319 .....	United Rentals, Inc .....	Robert Linekin .....	R.P.L. Equipment Co., Inc.
20002321 .....	Mortimer B. Zuckerman .....	Embark.com, Inc .....	Embark.com, Inc
20002322 .....	Embark.com, Inc. ....	Mortimer B. Zuckerman .....	U.S. News & World Report LP.
20002327 .....	Andrew J. McKelvey .....	System One Services, Inc .....	System One Services, Inc.
20002330 .....	Schlumberger Limited .....	CellNet Data Systems, Inc .....	CellNet Data Systems, Inc.
20002331 .....	Rockwell International Corporation .....	Entek IRD International Corporation .....	Entek IRD International Corporation.
20002335 .....	Clarian Health Partners, Inc.	Goshen Health Systems, Inc .....	Goshen Health Systems, Inc.
20002341 .....	COMSYS Holding, Inc.	Marsh Newmark .....	Design Strategy Corporation. Network Integration Services, Inc.
20002343 .....	Netcentives Inc. Post Communications, Inc Post Communications, Inc..		
20002344 .....	DLJ Merchant Banking Partners II, L.P.	UbiquiTel Holdings, Inc .....	UbiquiTel Holdings, Inc.
20002345 .....	MDS Inc. Phoenix International Life Sciences Inc.	Phoenix International Life Sciences Inc.	
20002352 .....	Vincent A. Sheehy & Helen M. Sheehy	Richard E. Strauss Dick Strauss Ford, Inc.	
20002359 .....	NetIQ Corp. Mission Critical Software Inc Mission Critical Software Inc.		
20002361 .....	Tera Computer Company Silicon Graphics, Inc.	Silicon Graphics, Inc..	
20002421 .....	Citigroup Inc .....	The Nikko Securities Co., Ltd .....	The Nikko Securities Co., Ltd.

## TRANSACTIONS GRANTED EARLY TERMINATION—03/24/2000

20002136 .....	The Toronto-Dominion Bank .....	Pathnet Telecommunications, Inc .....	Pathnet Telecommunications, Inc.
20002224 .....	New Enterprise Associate VI, Limited Partnership.	Pathnet Telecommunications, Inc .....	Pathnet Telecommunications, Inc.

Trans. No.	Acquiring	Acquired	Entities
20002244 .....	Triton Network Systems, Inc.	International Buisness Machines Corporation.	International Business Machines Corporation.
20002358 .....	Marconi plc .....	Addison Fischer .....	Xcert International, Inc.
20002435 .....	TPG Partners III, LP .....	Global Medical Products, Inc .....	Global Medical Products, Inc.

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 00-9267 Filed 4-13-00; 8:45 am]

**BILLING CODE 6750-01-M**

**FEDERAL TRADE COMMISSION**

[File No. 991 0218]

**FMC Corporation, et al.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 8, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Robert Tovsky, FTC/S-3105, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-2634.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent

agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 7, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis To Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") form FMC Corp. ("FMC"), Solutia Inc. ("Solutia"), and Astaris LLC ("Astaris"). The Consent Agreement is intended to resolve anticompetitive effects stemming from the proposed joint venture between FMC and Solutia to combine their respective phosphates and phosphorus derivatives businesses. The Consent Agreement includes a proposed Decision and Order (the "Order"), which would require FMC and Solutia to divest to Societe Chimique Prayon-Rupel ("Prayon") the portion of Solutia's phosphates business based in Augusta, Georgia, and to divest to Peak Investment, L.L.C. ("Peak") FMC's phosphorus pentasulfide business based in Lawrence, Kansas. The Consent Agreement also includes an Order to Maintain Assets which requires respondents to preserve the assets they are required to divest as viable, competitive, and ongoing operations until the divestitures are achieved.

The Order, if issued by the Commission, would settle charges that the proposed joint venture between

FMC and Solutia may have substantially lessened competition in the United States markets for pure phosphoric acid and phosphorus pentasulfide. The Commission has reason to believe that the proposed joint venture would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The Commission's complaint, described below, relates the basis for this belief.

The proposed Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and comments received and decide whether to withdraw its acceptance of the agreement or make the Order final.

According to the Commission's complaint, one relevant line of commerce in which to analyze the effects of the proposed joint venture between FMC and Solutia is pure phosphoric acid, and the relevant geographic market for this product is the United States. Pure phosphoric acid is used as an input into a wide variety of consumer and industrial products, ranging from cola beverages to cleaning compounds and metal treatments. The complaint describes FMC's and Solutia's production and sale of pure phosphoric acid, and further describes how each of the companies sells pure phosphoric acid directly to end-customers and uses it internally in the manufacture of different types of phosphate salts. According to the Commission's complaint, FMC and Solutia compete with each other in the manufacture and sale of pure phosphoric acid directly to end-customers, and in the manufacture and sale of phosphate salts.

The compliant alleges that the pure phosphoric acid market in the United States already is highly concentrated, and that the proposed joint venture would increase concentration in that market, as measured by the Herfindahl-Hirschman Index, by over 450 points, to a level over 2500. Furthermore, according to the complaint, new entry into this market is not likely.

The Commission's complaint further states that the market for pure phosphoric acid is conducive to coordination, that producers already

price independently of industry operating rates, and that producers target competitors' customers in retaliation against aggressive bidding as a means of deterring future competition. Furthermore, according to the complaint, prices for pure phosphoric acid are already the highest in the world. The complaint also describes how Solutia's agreement to purchase pure phosphoric acid from Emaphos, S.A. ("Emaphos"), a new producer of pure phosphoric acid in Morocco, makes Solutia the exclusive distributor in North America for Emaphos' pure phosphoric acid and restricts Emaphos from selling pure phosphoric acid to end-customers. According to the complaint, this provision of Solutia's agreement with Emaphos reduced the impact of potential competition from Emaphos in the United States market.

According to the Commission's complaint, another line of commerce in which to analyze the effects of the proposed joint venture is phosphorus pentasulfide. Phosphorus pentasulfide, which is typically sold in a solid, flake form to customers, is used primarily in the manufacture of chemical additives for engine lubricating oils, and also is used to a smaller extent in the manufacture of different types of insecticides. The complaint alleges that the only three companies that manufacture and sell phosphorus pentasulfide in the United States are Solutia, FMC and Rhodia, and Rhodia has announced that it is exiting the market. Therefore, the proposed joint venture would create a monopoly in this line of commerce. The complaint also states that the entry of new producers into this market is not likely. The complaint therefore alleges that the proposed joint venture would likely be able to exercise market power on a unilateral basis.

The proposed Order is designed to remedy the alleged anticompetitive effects of the joint venture in the United States markets for pure phosphoric acid and phosphorus pentasulfide, by requiring the divestiture to Prayon of Solutia's phosphates plant in Augusta, Georgia, and the divestiture to Peak of FMC's phosphorus pentasulfide plant in Lawrence, Kansas.

The Order would require respondents to divest the Augusta plant to Prayon within six months of the date that the Consent Agreement was accepted by the Commission. The Order would also require the respondents to provide Prayon with technology Solutia has used for manufacturing phosphates at the Augusta plant, and to divest other assets relating to the Augusta plant, including customer lists, contracts, and other intangible assets.

Prayon, based in Belgium, is one of the world's leading and lowest-cost producers of pure phosphoric acid. It operates two low-cost solvent-extraction plants to produce pure phosphoric acid in Belgium, and also is a partner in Emaphos, which operates a new low-cost solvent-extraction plant in Morocco. Prayon currently imports small volumes of pure phosphoric acid into the United States. With the acquisition of Solutia's Augusta plant, Prayon's presence in the United States would become much stronger, providing it with a base from which to expand its sales of pure phosphoric acid. Its competitive presence will also be enhanced by the Order's requirement that respondents revise the existing contract between Solutia and Emaphos so as to remove the restrictions that prevent Emaphos from selling pure phosphoric acid to end-customers. Emaphos' expansion in the United States through acquisition of the Augusta plant, and by virtue of the other provisions in the Order, will offset the loss of competition that would otherwise occur as a result of the joint venture.

The Order would also require respondents to divest FMC's phosphorus pentasulfide plant in Lawrence, Kansas to Peak within 30 days of the date that the joint venture is formed. The Order would require the respondents to provide Peak with technology FMC has used for manufacturing phosphorus pentasulfide at the Lawrence plant, and to divest other assets relating to the Lawrence plant, including customer lists, contracts, and other intangible assets. Because Peak will operate the phosphorus pentasulfide plant in Lawrence as part of a larger site that the joint venture will continue to own, and because Peak will rely on the joint venture for certain facilities and services, the proposed Order also contains several provisions designed to safeguard Peak's competitive position, in part by providing Peak with the opportunity to provide for itself the services and facilities it needs to operate the phosphorus pentasulfide plant. The proposed Order also contains a provision requiring the appointment of an interim trustee who would, for a period of two years, monitor the relationship at Lawrence to ensure that Peak has fair and full access to the services and facilities needed to operate the phosphorus pentasulfide plant.

If the Commission, at the time that it issues the Order, notifies respondents that it does not approve of the manner of either divestiture, or of either Prayon or Peak as purchasers of the Assets To

Be Divested, the proposed Order provides that respondents would have five months to divest either the Augusta plant or the phosphorus pentasulfide business to a different acquirer. If respondents do not complete such divestiture in that period, a trustee would be appointed.

The Order to Maintain Assets that is also included in the Consent Agreement requires that respondents preserve the Assets To Be Divested as viable and competitive operations until they are transferred to the Commission-approved acquirers. It requires the respondents to maintain the viability and competitiveness of the Assets To Be Divested, and to conduct the businesses to be divested in the ordinary course of business. Furthermore, it includes an obligation on respondents to build and maintain inventories of products at the Augusta and Lawrence plants consistent with regular business practice. The Order to Maintain Assets also requires respondents to provide certain support to Prayon in advance of the divestiture of the Augusta plant, including agreements to toll produce phosphates at Augusta, to allow Prayon to maintain an engineer at the Augusta site, and to provide certain information to Prayon regarding the Augusta operations.

The Consent Agreement requires respondents to provide the Commission, within thirty (30) days of the date the Agreement is signed, with an initial report setting forth in detail the manner in which respondents will comply with the provisions relating to the divestiture of assets. The proposed Order requires respondents to provide the Commission with a report of compliance with the Order within thirty (30) days following the date the Order becomes final and every thirty (30) days thereafter until they have complied with the divestiture requirements of the Order, and also requires annual compliance reports for 10 years.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement or the proposed Order or in any way to modify the terms of the Consent Agreement or the proposed Order.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

**Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony, Mozelle W. Thompson, Orson Swindle, and Thomas B. Leary**

We believe that the divestitures and other relief mandated by the proposed

Commission order should restore the competition lost through the joint venture between FMC Corporation and Solutia Inc. Nevertheless, we recognize that both divestitures are somewhat out of the ordinary.

When remedying a Clayton Section 7 violation, the Commission usually orders a complete divestiture of one merging party's assets that produce the relevant product. In the pure phosphoric acid ("PPA") market, though, the Commission requires the divestiture to Prayon of a plant that manufactures phosphate salts but not PPA. And in the phosphorus pentasulfide market, the Commission orders the divestiture to Peak of what is essentially a "plant within a plant." Due to the novelty of the relief, the Commission will monitor closely the respondents' compliance with their obligations under the order and will ascertain whether the relief ordered in this case effectively restores competition in each of the markets.

[FR Doc. 00-9264 Filed 4-13-00; 8:45 am]

BILLING CODE 6750-01-M

## GENERAL SERVICES ADMINISTRATION

### Public Buildings Service; Notice of Intent To Prepare an Environmental Assessment/Environmental Impact Statement (EIS)

**SUMMARY:** The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR part 1500-1508), for the construction of a new Federal courthouse in Eugene/Springfield, Lane County, Oregon.

The EA/EIS will be prepared at the completion of, and based upon, a scoping report. The EA/EIS will evaluate the proposed project, any other reasonable alternatives identified through the scoping process, and the no-action alternative. Scoping will be accomplished through two public scoping meetings and direct mail correspondence to interested persons, agencies, parties, and organizations. The public scoping meetings will be held on May 2nd & 3rd, 2000. The scoping meeting on the 2nd will be at the Hilton Hotel, 66 East 6th Ave., Eugene, WA. The scoping meeting on the 3rd, will be held at the Springfield City Hall—Council Meeting Room, 225 5th Street,

Springfield, OR. Both meetings will start at 6:30 p.m. with a open house at 6 p.m. GSA will publish a Public Notice of these meetings and all subsequent public meetings in the Eugene and Springfield newspapers approximately two weeks prior to each event. If an Environmental Assessment is prepared, it will be made available for public review. If significant impacts are not identified in the EA, GSA will issue a Finding of No Significant Impact (FONSI). If, upon completion of the EA, significant impacts to the environment are identified, GSA will then prepare an Environmental Impact Statement. Public meeting(s) will be held after the release of the Draft Environmental Impact Statement and GSA will respond to all relevant comments received during the 45 day public comment period through the Final Environmental Impact Statement. After a minimum 30-day period following publication of the Final Environmental Impact Statement, GSA will issue a Record of Decision that will identify the site selected.

**SUPPLEMENTARY INFORMATION:** GSA, assisted by Herrera Environmental Consultants, is anticipating the preparation of either the Environmental Assessment or Environmental Impact Statement on our proposal to acquire a site, and design and construct a new US Courthouse in Eugene/Springfield, Oregon. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines. GSA invites interested individuals, organizations, federal, state and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EA/EIS, including social, economic, cultural, historic, or environmental concerns. Scoping will identify the significant issues to be analyzed in the environmental document and serve as a method for commenting on the alternatives.

### Project Purpose, Historical Background, Description

The District Judges, Magistrates, and US Marshal are currently located in the existing US Courthouse in Eugene, Oregon. Bankruptcy and other court related Agencies are located in lease space in downtown Eugene. The existing Courthouse does not meet the requirements of the US Court's Design guide. The existing Courthouse/Federal building complex cannot be adapted to accommodate the required space and security needs of both the Court and Agency tenants.

Congress has authorized GSA to acquire a site for construction of the

new US Courthouse. The approximate gross square feet planned for the project is 228,000 for all US District Court and Bankruptcy Court activities.

### Alternatives

The EA/EIS will examine the short and long term impacts on the natural and built environment. The impact assessment will include, but not be limited to impacts such as cultural, historic, environmental, changes in land use, aesthetics, changes in traffic and parking patterns, economic impacts, and city planning and zoning.

The EA/EIS will also examine measures to mitigate significant unavoidable adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the National Historic Preservation Act to identify potential impacts to existing historic or cultural resources.

The EA/EIS will consider a no action alternative. The no-action alternative (no-build) alternative would continue the occupancy in the existing courthouse and continue to lease Court space in Eugene.

The 5 alternative locations are:

Site 1: C Street, Mill Street, Main Street, and Willamette River, Springfield.

Site 2: 8th Ave, Mill Street, Railroad tracks, Eugene.

Site 3: Fronting on the north side of International Way, Tax lot 3500, Springfield.

Site 4: 4th Ave, Willamette River, Hilyard Street, Railroad tracks, High Street, Eugene.

Site 5: 8th Ave, Hilyard Street, Broadway, High Street, and Main Street, Eugene.

**ADDRESSES:** As part of the public scoping process, GSA solicits your written comments on the scope of alternatives and potential impacts at the following address: Michael D. Levine, Regional Environmental Program Officer, 10PCP, symbol), General Services Administration, 400 15th Street SW, Auburn, WA, 98001, or fax: 253-931-7263, or e-mail at Michael.Levine@GSA.GOV Written comments should be received no later than May X, 2000

**FOR FURTHER INFORMATION CONTACT:** John Meerscheidt at Herrera Environmental Consultants, 2200 Sixth Ave, Seattle, WA 98121 or call 206-441-9080, or Michael D. Levine, GSA, (206) 931-7263.

**Mailing List**

If you wish to be placed on the project mailing list to receive future or further information as the EIS process develops, contact Herrera at the address noted above.

Dated: April 6, 2000.

**L. Jay Pearson,**

*Regional Administrator (10A).*

[FR Doc. 00-9376 Filed 4-13-00; 8:45 am]

**BILLING CODE 6820-23-M**

**GENERAL SERVICES ADMINISTRATION****Office of Communications; Cancellation of a Standard Form**

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** The following Standard Form is cancelled because of low usage: SF 1012A, Travel Voucher (Memorandum).

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Williams, General Services Administration, (202) 501-0581,

Dated: April 4, 2000.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer.*

[FR Doc. 00-9377 Filed 4-14-00; 8:45 am]

**BILLING CODE 6820-34-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Privacy Act of 1974; New System of Records**

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notification of a new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, the National Institutes of Health (NIH) is proposing to establish a new system of records, 09-25-0216, "Administration: NIH Electronic Directory, HHS/NIH."

**DATES:** NIH invites interested parties to submit comments concerning the proposed internal and routine uses on or before May 15, 2000. NIH has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on April 3, 2000. This system of records will be effective May 24, 2000 unless NIH receives comments on the routine uses, which would result in a contrary determination.

**ADDRESSES:** Please submit comments to: NIH Privacy Act Officer, 6011 Executive

Boulevard, Room 601, MSC 7669, Rockville, MD 20892, 301-496-2832. (This is not a toll free number.) Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20892, 301-496-2832, (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** The National Institutes of Health (NIH) proposes to establish a new system of records: 09-25-0216, "Administration: NIH Electronic Directory, HHS/NIH." The purpose of the NIH Electronic Directory system of records is to support e-government; allow effective controls over the creation, maintenance and use of records in the conduct of current business; provide for effective management of costs, operation and interconnectivity of NIH information systems; provide the required structure for network security; and provide an accurate source of directory information at the NIH.

This system of records will allow the NIH to reliably identify individuals and manage the federal resources and authorities assigned to them, e.g., organizational telephone numbers, addresses, and security authorizations. A single 10-digit NIH unique identifier (UID) will be assigned to each individual to permit association of a single person with descriptive information and resources throughout their career. It will allow creation of accurate records for individuals in the NIH directory and ensure that duplicate data files are compared, corrected and combined for accuracy, thus eliminating redundancy and general errors in identification.

Data collected is used to build an NIH centralized source identification directory and provides for directory security, system authentication and authorization. This system supports NIH corporate business processes and electronic commerce. Other Privacy Act systems of records that utilize this system as a source or confirmation for identification information will show this system as a records source.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH staff will be required to adhere to the provisions of the Privacy Act, HHS Privacy Act Regulations, and the requirements of the DHHS Automated Information Systems Security Program Handbook.

Records may be stored on electronic media and as hard-copy records. Manual and computerized records will

be maintained in accordance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and the Department's Automated Information System Security Program Handbook.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: April 3, 2000.

**Anthony L. Itteilag,**

*Deputy Director for Management, NIH.*

**SYSTEM NAME:**

Administration: NIH Electronic Directory, HHS/NIH.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Records are maintained in databases located within the NIH computer facilities and the files of NIH functional offices required to identify individuals in order to manage the federal resources and authorities assigned to them. A current list of sites, including the address of any Federal Records Center where records from this system may be stored, is available by writing the System Manager listed under Notification Procedures below.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Users of NIH resources and services including but not limited to: current and past NIH employees, contractors, tenants of NIH facilities, participants in the NIH visiting programs, registered users of NIH computer facilities, grantees, reviewers, council members, collaborators, vendors, and parking permit holders. This system does not cover patients and visitors to the NIH Clinical Center.

**CATEGORIES OF RECORDS IN SYSTEM:**

This system is a source system that provides identification data to a variety of directory services at NIH that share comparable information and assign or relate dedicated federal resources to individuals. This system provides for a central directory that allows NIH to manage NIH corporate business processes and electronic commerce. The types of personal information in this directory are necessary to ensure the accurate identification of individuals

doing business in or with the National Institutes of Health. The types of personal information included in this directory are: Name, alias names, date of birth, place of birth, Social Security Number, gender, home address, home phone number, home FAX number, personal pager number, personal mobile phone number, personal email address, emergency contacts, photograph, digitized written signature, digitized biometrics, and NIH-assigned unique identifier. Public data refers to non-sensitive information readily available to the general public (e.g., name, building, room number, and work phone). Non-public data refers to sensitive/confidential information or data for which access is limited to appropriate staff with a valid need-to-know in the performance of their official job duties, or as outlined in the routine uses for disclosure (e.g., SSN, gender, home address, date of birth, place of birth).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301 and 302, 44 U.S.C. 3101 and 3102, Executive Order 9397.

**PURPOSE:**

The purpose is to establish a consolidated and centrally coordinated electronic directory to support e-government of administrative business processes; allow effective controls over the creation, maintenance and use of records in the conduct of current business; provide for effective management of costs, operation and interconnectivity of NIH information systems; provide the required structure for network security; and provide an accurate source of directory information at the NIH. Data collected is used to build an NIH centralized source identification directory and provides for directory security system authentication and authorization and supports NIH corporate business processes and electronic commerce. This system of records enables NIH to reliably identify individuals and those federal resources assigned to them. A NIH unique identifier (UID) will be assigned to each individual to permit identification of a single person with their descriptive information and resources throughout their career.

This system allows for the creation of accurate records for individuals in the NIH directory and ensures that duplicate data files are compared, corrected and combined for accuracy, thus eliminating redundancy. It is the central point of coordination for other automated systems that manage or track

resources, particularly information security systems.

**INTERNAL USE AND ACCESS TO PERSONAL INFORMATION:**

Internal use and access to the personal information in this system will be limited to those with a valid need-to-know in the performance of their official duties. Typical internal uses of the system, including categories of users, uses of the data collected and the need for such use are as follows:

- Trans-NIH Human Resource Personnel, Administrative Officers, and administrative technicians, will access all public and non-public records for employees and/or NIH affiliates within their scope of responsibility to access/track staffing information such as personal/work contact information, physical location, and/or any other information to facilitate current NIH administrative business processes.

- Information Resources Management staff and Space and Facility Management personnel will have access to view public data (building location and work phone information) to coordinate access for, and the allocation of, telecommunication resources and building space/access.

- Supervisors, Administrative Officers and Administrative Technicians will have access to emergency contact information to enable them to contact someone in the event of an emergency.

- NIH central services staff, NIH police, and NIH management will access both public and non-public data to coordinate/track employee data required for other NIH business processes such as card key access, ID badges, parking permits, library resources, census information gathered for reporting requirements, employee development, training, campus security, and other administrative processes.

- NIH Security Officers, or other incident response personnel will have access to public/non-public data where NIH deems it necessary for official investigations or security incidents involving suspected intrusion, illegal activity, or unauthorized/unethical misuse of the system of records or data therein.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

3. Disclosure may be made to agency contractors, experts, consultants, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain Privacy Act safeguards with respect to these records.

4. Disclosure may be made to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a security clearance, grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

5. Disclosure may be made to the Department of Justice, or to a court or other adjudicative body, from this system of records when: (a) HHS, or any component thereof; or (b) any HHS officer or employee in his or her official capacity; or (c) any HHS officer or employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the officer or employee; or (d) the United States or any agency thereof where HHS determines that the proceeding is likely to affect HHS or any of its components, is a party to the proceeding or has any interest in the proceeding, and HHS determines that the records are relevant and necessary to the proceeding and would help in the effective representation of the governmental party.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM**

**STORAGE:**

Records are maintained on electronic media such as computer tape and disk and/or hard-copy. Automated records are stored in controlled computer areas. Both manual and computerized records will be maintained in accordance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records", supplementary Chapter PHS hf: 45-13, and the Department's Automated Information System Security Program Handbook.

**RETRIEVABILITY**

Records are indexed and retrieved by: name, unique identifier, alias names, and social security number.

**SAFEGUARDS:**

1. *Authorized Users:* Non-public data on computer files is accessed by keyword known only to authorized users who are NIH employees or contractor staff who have a legitimate operational responsibility to access the data in the performance of their duties as determined by the System Manager. Staff are only granted access to those directories or fields for which they have operational responsibilities. User activity is recorded. Occurrences of non-routine user or operator activity are recorded. Public data is controlled by user-defined view via a web-based look-up table. View of public data is accessible and controlled via the NIH network.

2. *Physical Safeguards:* Physical access to the computer systems where records are stored is controlled through the use of door locks and alarms.

3. *Procedural and Technical Safeguards:* Access to the non-public data will be controlled through: password protection, user authentication, and system administration procedures for user access. User name and password authentication procedures are in place to protect non-public data from public view, and to prevent unauthorized personnel from accessing data. Logical access controls, based on job function, are in place to authorize and/or restrict the user activity and view of the data. Persons having access to data are restricted to a field-by-field confined user interface that permits a controlled, or narrow "view" of the data. Sensitive data transferred between NIH source databases is secured through encryption or similar manner. Digital certificates and automated user audit trail capabilities have been incorporated to ensure data integrity and to detect evidence of data tampering.

These practices are in compliance with standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records", supplementary Chapter PHS hf: 45-13, and the Department's Automated Information Systems Security Program Handbook.

**RETENTION AND DISPOSAL:**

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the NIH Records Control Schedule. The Records Control Schedule and disposal standard

for these records may be obtained by writing to the System Manager at the address below.

**SYSTEM MANAGER(S) AND ADDRESS:**

NIH Privacy Act Officer, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20892.

**NOTIFICATION PROCEDURES:**

Write to the System Manager listed above. The requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand-dollar fine. The request should include (a) Full name, and (b) address, and (c) year of records in question.

**RECORD ACCESS PROCEDURES:**

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requester should also reasonably specify the record content being sought. Individuals may also request an accounting of disclosure of their records, if any.

**CONTESTING RECORDS PROCEDURES:**

Address a petition for amendment to the System Manager. All requests must be in writing. The individual must identify himself/herself, specify the system of records from which the records are retrieved, the particular records to be corrected or amended, whether seeking an addition to or a deletion or substitution for the records, and the reason for requesting correction or amendment of the record.

**RECORD SOURCE CATEGORIES:**

NIH employees, contractors, and other persons who are using or performing services on behalf of the NIH, and the NIH human resource databases (*i.e.*, Human Resource Database (HRDB), Fellowship Payment System (FPS), J.E. Fogarty Database of Foreign Visiting Scientists (JEFIC), NIH Telecommunications Database (TELCOM), Parking and Identification Database (PAID), Email Directory and Forwarding Service (PH directory), and the Integrated Time and Attendance System (ITAS)).

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 00-9186 Filed 4-13-00; 8:45 am]

BILLING CODE 4140-01-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4561-N-24]

**Notice of Submission of Proposed Information Collection to OMB; Evaluation of the Housing Opportunities for Persons With AIDS (HOPWA) Program**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 15, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, e-mail Wayne\_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how

frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Evaluation of the Housing Opportunities for Persons with AIDS (HOPWA) Program

*OMB Approval Number:* 2528-XXXX  
*Form Number:* None.

*Description of the Need for the Information and Its Proposed Use:* The purpose is to evaluate the effectiveness of HUD's Housing Opportunities for Persons with AIDS (HOPWA) program. The information will be collected from government agencies receiving funds directly from HUD (acting as grantees), local governments and non-profits receiving funds from the grantees

(acting as project sponsors) and low-income persons with HIV/AIDS who are assisted by the HOPWA program (acting as clients), non-profits receiving funds from the grantees (acting as project sponsors) and low-income persons with HIV/AIDS who are assisted by the HOPWA program (acting as clients).

*Respondents:* Business or other-for-profit, individuals or households, not-for-profit institutions, State, Local or Tribal Government.

*Frequency of Submission:* One-Time  
*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	×	Burden hours
Information Collection .....	650		1		.92		600

*Total Estimated Burden Hours:* 600  
*Status:* New

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 7, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 00-9285 Filed 4-13-00; 8:45 am]

**BILLING CODE 4210-01-M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4561-N-25]

**Notice of Submission of Proposed Information Collection to OMB; Continuum of Care Homeless Assistance Application**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 15, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506-0112) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne\_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the

information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Continuum of Care Homeless Assistance Application.

*OMB Approval Number:* 2506-0112.

*Form Numbers:* HUD-40076-CoC, HUD-40076-2, HUD-40085-2.

*Description of the Need for the Information and Its Proposed Use:* Information is collected from potential grantees applying for grants under competitive homeless assistance programs.

*Respondents:* Not-for-profits, State, Local or Tribal Governments.

*Frequency of Submission:* Upon application for benefits.

*Reporting Burden:*

	Number of respondents	Frequency of responses	Total responses	Hours per response	Burden hours
Application .....	3,000	1	3,000	44	132,000
SHP/SRO tech .....	1,620	1	1,620	44	71,280
Total .....	3,000	2	4,620	44	203,280

*Total Estimated Burden Hours:* 203,280.

*Status:* Extension of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 7, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00-9286 Filed 4-13-00; 8:45 am]

**BILLING CODE 4210-01-M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4561-N-26]

**Notice of Submission Of Proposed Information Collection to OMB; Application for Indian Community Development Block Grant (ICDBG) Program**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 15, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577-0191) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne\_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the

description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Application for Indian Community Development Block Grant (ICDBG) Program.

*OMB Approval Number:* 2577-0191.

*Form Numbers:* HUD-4121, -4122, -4123, -4125, -4126.

*Description of the Need for the Information and Its proposed use:* HUD will announce funding availability for ICDBG Program in the **Federal Register**. Eligible applicants submit the information to HUD for review and grantee selection.

*Respondents:* State, Local, and Tribal Governments.

*Frequency of Submission:* One-time.

Reporting Burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	320		1		40		12,800

*Total Estimated Burden Hours:* 12,800.

*Status:* Reinstatement of previously approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 7, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00-9287 Filed 4-13-00; 8:45 am]

**BILLING CODE 4210-01-M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4561-N-27]

**Notice of Submission of Proposed Information Collection to OMB; Advance of Escrow Funds**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 15, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502-0018) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and

Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne\_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar

with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Advance of Escrow Funds.

*OMB Approval Number:* 2502-0018.

*Form Numbers:* HUD-92464.

*Description of the Need for the Information and Its Proposed Use:* Building loan agreements executed

between a mortgagor and mortgagee provide for the advancement of progress payments during construction. The information collected here facilitates such advances of escrow funds upon approval of the Commissioner and architect's and inspector's certification.

*Respondents:* Business or other for-profit entities and not-for-profit entities.

*Frequency of Submission:* On occasion.

	Number of re- spondents	x	Frequency of response	x	Hours per response	=	Burden hours
	525		1		2		1,050

*Total Estimated Burden Hours:* 1,050.  
*Status:* Reinstatement of previously approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 00-9288 Filed 4-13-00; 8:45 am]

**BILLING CODE 4210-01-M**

and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 6, 2000.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Program.*

[FR Doc. 00-9040 Filed 4-13-00; 8:45 am]

**BILLING CODE 4210-29-M**

impacts of proposed management actions on the resources. Therefore, the EA and FONSI associated with the draft CCP is hereby rescinded.

The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations. This notice describes the proposed plan and possible alternatives, invites public participation in the scoping process for preparing the CCP and EIS, and identifies the Service official to whom questions and comments concerning the proposed action may be directed. Three open houses, for the purpose of public scoping, will be held from 4 pm to 8 pm on the following dates at the indicated locations.

1. Tuesday, June 6, 2000; Yuma, AZ at the Shilo Inn, 1550 S. Castle Dome.
2. Wednesday, June 7, 2000; Ajo, AZ at the Ajo Community Center at Bud Walker Park, 2090 E. 5th St.
3. Thursday, June 8, 2000; Tucson, AZ at the Holiday Inn Palo Verde, 4550 S. Palo Verde Rd.

The public is invited to drop by anytime from 4 pm to 7 pm to view materials, discuss issues and alternatives, and submit written and oral comments and questions. The purpose of this scoping is to verify if issues identified during the CCP/EA phase are still applicable, determine if there are any new major issues, and to receive comments on the range of proposed alternatives.

**FOR FURTHER INFORMATION CONTACT:** Don Tiller, Refuge Manager 520-387-6483 or Thea Ulen, Planner/CCP Project Manager 520-743-2090.

All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4557-N-15]

**Federal Property Suitable as Facilities to Assist the Homeless**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Notice of Intent To Prepare a Comprehensive Conservation and Wilderness Management Plan and Associated Environmental Impact Statement**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation and wilderness management plan and associated environmental impact statement.

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation and Wilderness Management Plan (CCP) and associated Environmental Impact Statement (EIS) for Cabeza Prieta National Wildlife Refuge (NWR), Pima and Yuma Counties, Arizona. Following the release of the second Draft CCP and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), in September 1998, the Regional Director determined that an EIS would be necessary due to the national significance of wilderness resources on the Cabeza Prieta NWR, and thus, the potential for significant

Information Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)), and other Service and Departmental policy and procedures.

If you wish to comment, you may submit your comments by any one of several methods by May 15, 2000. You may mail comments to CCP Project Coordinator, 1611 N. 2nd St., Ajo, AZ 85321. You may also comment via the Internet to R2RW\_CP@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: Cabeza Prieta CCP" and your name and return address in your Internet message. If you do not receive confirmation from the system that we have received your Internet message, contact us directly at Cabeza Prieta NWR, Don Tiller, 520-387-6483. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals, identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### Planning Updates

A link to Planning Updates will be posted on the refuge website ([www://southwest.fws.gov/refuges/arizona/cabeza.html](http://www.southwest.fws.gov/refuges/arizona/cabeza.html)) beginning mid-April, 2000, or mailed to those on the mailing list.

Address requests to be placed on the mailing list to: Planning Branch, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103. Be sure to indicate the Cabeza Prieta NWR list on your request.

**SUPPLEMENTARY INFORMATION:** The Service started the process of developing a Comprehensive Management Plan for Cabeza Prieta National Wildlife NWR in 1994 with three open houses and public meetings held in Yuma, Ajo, and Tucson. A focus group was assembled in February of 1995 to provide further assistance to the Service in developing possible alternatives. Day-long workshops open

to the public were held in August of 1995 to refine detailed management suggestions. The Draft CCP and Environmental Assessment was released in August of 1997 and a second draft CCP and final EA was released in September of 1998. During preparation of the final CCP, the Service determined that substantial changes were needed to comply with legal responsibilities under the Wilderness Act of 1964 and Arizona Desert Wilderness Act of 1990. In January of 2000, the Regional Director determined to engage the development of an EIS for the CCP for Cabeza Prieta NWR because of the national significance of the refuge resources and wilderness.

Persons and organizations involved in the scoping process include: the U.S. Department of Interior, National Park Service and Bureau of Land Management; U.S. Department of Defense, Luke Air Force Base and Barry M. Goldwater Bombing Range (BMGR); Arizona Game and Fish Department (AGFD); leaders and members of the Tohono O'odham and Hia C-ed O'odham Nations; members of the Ajo Chamber of Commerce; members of the International Sonoran Desert Alliance; scientific experts from universities, members of national, state and local conservation organizations; neighboring landowners; and other interested citizens. Comments and concerns received during the EA phase of developing the CCP have been used to identify issues and alternatives.

Cabeza Prieta NWR was established by Executive Order in 1939 as the Cabeza Prieta Game Range "for the conservation and development of natural wildlife resources, and for the protection and improvement of public grazing lands and natural forage resources \* \* \* provided, however that all the forage resources in excess of that required to maintain a balanced wildlife population within this range or preserve shall be available \* \* \*". Its primary purpose was to assist in the recovery of desert bighorn sheep. The Range's grazing resources were jointly administered with the Bureau of Land Management. In 1975, the name was changed to Cabeza Prieta National Wildlife Refuge and the U.S. Fish and Wildlife Service was given sole jurisdiction. Grazing was determined to conflict with the refuge's primary purpose of wildlife conservation and was phased out in the 1970s. A majority of the refuge has been included in a military withdrawal for flight training since World War II. Over the years, refuge responsibilities have expanded through additional legislation directly affecting the refuge such as the

Endangered Species Act of 1973 and the Arizona Desert Wilderness Act of 1990, and through regulations and laws that affect the National Wildlife Refuge System. Cabeza Prieta provides important habitat for the last remaining herd of Sonoran pronghorn antelope in the U.S. and is the largest refuge wilderness outside of Alaska.

#### Refuge Goals

The following four proposed refuge goals for management are consistent with the Refuge purpose, Ecoregion goals, the National Wildlife Refuge System (Refuge System) mission and goals, the National Wildlife Refuge System Improvement Act of 1997, Service policy, the Wilderness Act of 1964, and the Arizona Desert Wilderness Act of 1990. Following each goal is a list of guiding management principles as developed from the Service's vision document Fulfilling the Promise.

*(1) Wildlife and Habitat:* Protect, maintain, enhance, and restore the diversity and abundance of wildlife species and ecological communities of the Sonoran desert represented on the wilderness and non-wilderness land of the Cabeza Prieta NWR.

- Wildlife comes first.
- Healthy habitats are key to healthy wildlife populations.
- The refuge must balance its responsibility for trust species and biodiversity to meet Refuge System and ecosystem goals.
- Management should mimic, where possible, natural processes.
- Refuges need baseline data in order to evaluate management options and prioritize activities.

*(2) Wilderness Management:* Keep wildlife and plant resources wild, and their condition altered as little as possible by human influences, reduce the "imprint of man" on wilderness resources, and permit compatible wildlife-dependent recreation.

- Wilderness is a reservoir of biodiversity and natural evolutionary processes.
- The use of restraint is central to wilderness management-limiting mechanical use to that which is necessary to manage these areas as wilderness.
- Wilderness is a valued remnant of our American cultural heritage symbolizing national and natural values.
- Wilderness provides outstanding opportunities for solitude or primitive and unconfined type of recreation leading to feelings of renewal, inspiration, and awe.

(3) *Visitor Services Management:* provide visitors with compatible, high quality, enjoyable wildlife-dependent recreational experiences that result in a better appreciation, understanding, and protection of plant, animal, and wilderness resources.

- Compatible wildlife-dependent recreation and education are appropriate public uses.
- Visitors find national wildlife refuges welcoming, safe, and accessible with a variety of opportunities to enjoy and appreciate America's legacy of wildlife.
- The heritage and future of the System is intertwined with the will of concerned citizens.

(4) *Cultural Resource Management:* Protect, maintain, and plan for cultural and historic resources on the Cabeza Prieta NWR, in cooperation with the Tohono O'odham Nation, Hia C-ed O'odham leaders, Yuman and other Native American interests, and the State Historic Preservation Officer for the benefit of present and future generations.

#### Alternatives Being Considered

The following proposed alternatives are being considered including a no change from present management (no action) alternative. In the CCP and EIS, all alternatives will consider objectives and strategies to accomplish refuge goals, address issues identified in scoping, and the environmental effects will be discussed and compared.

##### *I. No Change From Present Management (No Action)*

The No Change or status quo alternative is a required element in CCP planning. Like many refuges, Cabeza Prieta NWR is operating without an approved management plan. Taking no action would imply that the Refuge Goal Statements would not be adopted. Refuge management would continue to be based on general purposes of the refuge, Service's policy, and goal statements identified in 1986 during a nationwide refuge Planning Needs Assessment.

No changes would be made to the biological program which includes aerial surveys and monitoring for bighorn sheep and pronghorn and maintaining water developments for both species. Radio telemetry studies for pronghorn would continue and requests for research from universities and other agencies would be granted if the Refuge Manager deems them worthy. Vehicular travel on administrative roads for research, law enforcement, and maintenance purposes would remain at the current level of approximately 700

miles per year. The bulk of those trips are to monitor and fill wildlife water developments (artificial waterholes, ponds, and guzzlers). Existing water developments would remain and would be repaired as necessary utilizing minimum tool. Biological monitoring would include studies already underway at the 1998 levels and in the same manner: 3 bird surveys, remote photo surveys of waterholes, and rainfall gauge monitoring. There would be no population or habitat goal for bighorn sheep and no new pronghorn projects would be started.

The abandoned administrative roads would not be rehabilitated and all 159 miles of administrative roads in existence would remain. Wilderness character would be diminished by remaining structures and considerable administrative traffic.

Public use activities would remain the same with a permit required for entry and 4WD required for all access roads which are limited to El Camino del Diablo, the Christmas Pass (Tacna Road), and Charlie Bell Road. The permit would be available only at refuge headquarters which would operate on weekdays only. Bighorn sheep hunting would continue in cooperation with AGFD with permit levels established according to tri-annual survey results.

Visitor services would be limited to existing exhibits and the visitor center would not be staffed weekends. Without the 30 acres adjacent to the Visitor Center, only a very short nature trail could be developed there. There would be limited opportunity for visitors without a 4WD vehicle to experience the refuge. Educational efforts would continue with area schools and programs presented by the Cabeza Prieta Natural History Association. Tours would be provided to the summit of Childs Mountain by special arrangement. Backpacking, hiking, horseback riding, camping and campfires would continue under restrictions currently in place.

There would be no change in procedures for cultural resource protection and no surveys begun unless the resource was in imminent danger. Law enforcement would be limited to a collateral duty for 3 staff who have other primary job responsibilities. Most infractions will go undetected and there would be rare coverage on weekends.

##### *II. Wilderness Management Balanced With Active Non-Wilderness Management*

The refuge will maintain its wilderness character while providing for management of healthy ecosystems. Needed management actions will

undergo a more rigorous minimum tool assessment and contribute to the greater understanding of the ecosystem. The refuge will continue working towards understanding population dynamics for desert bighorn sheep and Sonoran pronghorn and contribute to their protection and recovery within their historic range. The Sonoran Pronghorn Recovery Plan will be updated to include the herd in Mexico. The refuge could participate in a limited forage enhancement project in non-wilderness if the pilot project off refuge lands is successful and contributes to recovery and an EA or EIS proves favorable. Regional planning would be accomplished through existing cooperative organizations with greater emphasis on ecosystem/biosphere coordination. More emphasis will be placed on monitoring key species and developing baseline biological data to help understand and manage a healthy system. Water management will be made more natural and the refuge will understand the impact of artificial waters in desert ecosystems. Water hauling will stop except in emergencies and the results will be monitored. Non-essential guzzlers will be removed and charcos (man-made ponds) will not be cleared. Well sited water developments will continue to be maintained using minimum tool during this time frame while the role of water developments is being evaluated. Vehicular use in wilderness will be reduced to minimum levels necessary to maintain wilderness character by using stock animals and remote sensors for monitoring, elimination of unnecessary facilities and water hauling, and stringent application of minimum tool analysis. Over 140 miles of abandoned roads will be eliminated and their trailheads rehabilitated and the administrative road system will be reduced by 47 miles.

Public access would continue to require permits but the refuge will work to simplify the system while still ensuring the ability to provide accurate information and obtain visitation data. Interpretive activities and opportunities will be increased with improved exhibits and signs and purchase or lease of 30 acres adjoining the Visitor Center and development of a nature trail there. The visitor center will be staffed weekends through the winter season. The refuge will explore the possibility of opening a tour loop in non-wilderness that will help reduce two-way traffic if there is not a significant impact to wildlife or cultural resources. The bighorn sheep hunt will remain a unique wilderness experience for hardy

individuals. Additional law enforcement will increase wilderness compliance and cultural resource protection. The refuge will work with border law enforcement agencies to aggressively deter illegal undocumented alien traffic currently damaging resources.

### III. Increase Active Wildlife Management and Recreational Opportunities

Under this alternative, the refuge would maximize wildlife production through active management and increase public use opportunities. Water developments would continue to be viewed as essential elements in bighorn sheep and pronghorn management. While no new water developments would occur in wilderness, they could be developed in non-wilderness, and wilderness waters would not be permitted to go dry. Modifications to existing structures would reduce evaporation, improve storage capacity, and make them appear more natural. This alternative would call for increased use of remote sensing devices and reduce wilderness vehicular trips by using horses. The pronghorn charcos would be cleared of vegetation in hopes of attracting pronghorn use. Artificial water and forage proposals would be considered for non-wilderness and the refuge would participate with the Recovery Team to find ways of expanding pronghorn habitat and exchange among existing herds. Radio collaring and aerial surveys would be considered important tools used to assess the population and habitat needs for pronghorn. The refuge would remove all military training debris on an aggressive schedule and closely monitor crash site cleanup to minimize habitat impacts.

The refuge would increase its monitoring effort to obtain baseline data for key resources. This would more than likely result in several monitoring sites that would not be within summer walking distance without extraordinary effort. Invasive species would be controlled through the use of herbicides using minimum tool methods. All administrative roads would remain for essential research, management, and law enforcement, but those needs would be more broadly defined than in Alternative 2. The refuge would work within existing coordinating committees to develop regional plans for natural resource protection.

This alternative would impose permit levels immediately at designated campsites to reduce impacts. El Camino del Diablo would remain 4WD only, but Copper Canyon would be opened to

provide a tour loop from Ajo. The refuge would work with the Ajo Chamber of Commerce to promote ecotourism for the area. The permit system would be simplified by using a self-issue permit at entry points. The bighorn sheep hunt would remain the same, but hunting would be open to small game and deer as well. The refuge would pursue acquisition or lease of the 30 acres adjacent to headquarters for a nature trail.

Backpacking, camping, and horseback riding would be permitted throughout the refuge with restrictions to ensure compatibility. Wood campfires and collecting dead and down wood would be permitted.

Cultural resources would receive increased protection with expansion of law enforcement coverage and increased messages in informational materials. The refuge would continue to work with Border Patrol and others to reduce impacts caused by illegal traffic and enforcement.

### IV. Minimize Active Wildlife Management and Emphasize the Ecological Preserve

In this alternative, the refuge would provide maximum protection of resources with little active management in either wilderness or non-wilderness portions of the refuge. Public Use management would be closely regulated to prevent resource impacts. This philosophy believes the best protection can be provided by leaving things in their natural state allowing processes to occur. The goal for bighorn sheep population would be to achieve a level appropriate for the ecosystem without water developments. All tanks and guzzlers would be removed and maintenance would stop on runoff tanks and charcos. Concrete structures would be gradually removed, returning canyons and washes to their natural state. All studies and monitoring would have to be done without motorized access and would be approved only if they were critical to understanding refuge resources. The vegetation around charcos would be left as removal would cause more disturbance. Additional protection of dry riparian habitats would be provided by prohibiting travel by horseback or camping in washes. Pronghorn recovery efforts would be aimed at protecting and restoring additional historic habitat to the east of their current range, reducing military activities, and imposing seasonal public use closures during fawning season. Radio collaring and aerial tracking would be curtailed because of the stress they cause. Additional effort would be placed on lesser-long nosed bats by

installing bat gates on the mine shaft to their roost sites to prevent human disturbances. The summit of Child's Mountain would be reclaimed for wildlife use and tours would not be permitted. The refuge would aggressively control exotic species, but limit their actions to the use of hand tools and non-chemical or mechanized means in wilderness. Regional ecosystem planning would best be accomplished by a single administering agency as suggested by the Sonoran Desert National Park proposal.

This alternative calls for eliminating the administrative roadway system which could only be used in emergency situations. Of particular concern are the Mohawk Valley Rd. and Welton Rd. All obsolete roads would be closed and the trailheads obliterated and revegetated. Remote sensors, helicopters, and horses would preclude the need for vehicle use in the wilderness and additional funding would be needed for this purpose. Border Patrol, Customs, and Drug Enforcement Agency (DEA) would be encouraged to conduct all their activities by air.

Permit levels would be established immediately and designated campsites established. Permits would be issued by the refuge only. All public roadways would require 4WD and access to Charlie Bell road would be closed seasonally. Bighorn sheep hunting would continue at reduced permit numbers and without horse or pack animals. There would be no expansion of hunting to other species. An additional alternative would recommend closing the refuge to all hunting. Educational efforts on and off refuge would be increased with the exception that guided tours to Child's Mountain would be discontinued.

Backpacking and camping would be permitted, but campsites would be designated and only gas stoves would be permitted (no charcoal or wood fires). Leave No Trace materials and an orientation video would be required viewing and reading before permits are issued. Horseback riding and pack animals would not be permitted.

In addition to cultural resource protection and education already proposed in alternative 2, this alternative would fund a refuge-wide inventory and survey for cultural sites.

This alternative recognizes the impacts being caused by illegal alien traffic, but places heavier emphasis on curtailing Border Law Enforcement actions restricting their access to administrative roads.

## Issue Resolution and Environmental Review

A tentative list of primary issues to be included in the CCP/EIS evolved from the scoping and comments on the CCP and EA. There will be opportunity to comment on any unidentified issues during public scoping including open houses and written comments. The CCP and EIS will discuss the following issues by alternative and the potential environmental effects of each.

### (1) *Wildlife and Habitat Management Issues*

#### (1.a) Bighorn Sheep Management

Despite 60 years of bighorn sheep management, the refuge does not have a clear goal of what it would see as habitat or population goals for desert bighorn sheep at Cabeza Prieta NWR and the role the refuge plays in the larger ecosystem. Management has followed traditional lines of water development to increase herd size, and in early years, to keep bighorn sheep on the refuge where it was given protection.

The issues with bighorn sheep management centers on vehicular use in the wilderness to maintain and monitor artificial water developments. The Wilderness Act prohibits vehicular use except to meet minimum requirements of managing for wilderness. In order to use vehicles the refuge must demonstrate that artificial water developments are essential to the purpose of the refuge or management of wilderness resources (which does include bighorn sheep).

In February 2000, the refuge invited several bighorn sheep experts to offer their professional opinions regarding sheep management and water developments in arid environments. The results will be used to help develop management objectives.

- What should be the population and habitat goals for bighorn sheep at Cabeza Prieta NWR, given legal restrictions wilderness designation imparts?
- What role do artificial water developments for desert bighorn sheep play in the desert ecosystem? What would be the effect of removing guzzlers and stopping water hauling?
  - Are there other means of monitoring and maintaining water developments determined to be necessary (and in the interim) that would not require vehicular use?
  - Could needed structures be more "natural" in appearance?

#### (1.b) Managing Healthy Ecosystems

One of the goals of the System is to manage for diversity of native flora and

fauna and contribute to broader ecosystem goals. Many participants felt the refuge doesn't have enough information to manage as a system, others felt that a hands-off approach would best serve this area.

- What inventories need to be conducted to have an understanding of refuge resources (at what frequency and in what manner to comply with wilderness guidelines)?
  - Should any current practices be altered to benefit a wider variety of native species at natural levels?
  - Should the refuge engage in aggressive elimination of non-native plants and subsequently revegetate areas of the refuge?
    - To what degree can the refuge protect unique and rare habitats used by neotropical migrant avian species?
    - What research priorities could directly contribute to the refuge's purposes and goals?
    - What role should the refuge play in promoting a wider understanding and cooperative management of the Sonoran Desert Ecosystem?

#### (1.c) Endangered Species Management

The refuge provides protection and habitat for several endangered species. The Sonoran pronghorn receive primary attention because the refuge is located in the heart of their range. Past management has included protection of habitat, removing grazing from the refuge, experimental waters, fencing parts of the boundary to prevent trespass cattle, and study of their movements and habitat use. Recently, additional experimental waters and forage plots have been proposed. These proposals and radio collaring are most controversial. Current refuge water developments targeted for this species appear to not be essential and are poorly located.

- What strategies should the refuge use to protect and assist in recovery of populations of endangered Sonoran pronghorn?
  - What partnerships with Mexico could aid in the recovery of Sonoran pronghorn?
  - Should we discontinue hauling water and remove guzzlers that are now used by other wildlife?
  - Is radio collaring providing valuable information worth the risks of capture shock deaths?
  - What other T&E species need strategies leading to protection and better understanding?

#### (2) *Wilderness Management Issues*

Cabeza Prieta is the largest refuge wilderness in the lower 48 states. Its national prominence has implications

for other wilderness management plans. In Fulfilling the Promise, the Service calls for elevating the status of its wilderness areas and calls for "acknowledging wilderness as a unique resource, the management of which is a specialized discipline." The plan needs to exemplify the best the Service can do for wilderness.

#### (2.a) Management Activities

Refuge managers sometimes feel torn between perceived conflicting goals for wildlife and wilderness management. The Wilderness Act does not preclude essential wildlife management activities, but does place a heavier burden of proof of the essential character of activities, requires diligent application of the Minimum Tool Decision Process and its documentation, and calls for restraint in management.

- What management activities are appropriate for Wilderness?
  - What rehabilitation projects are needed to restore wilderness resources or character?
  - What can the refuge do to improve its Minimum Tool assessment?

#### (2.b) Administrative Trails Within Wilderness

The Wilderness Act of 1964 prohibits any permanent roads within wilderness and temporary roads may be used only for the minimum requirements for the administration of the area as wilderness and for emergencies involving human health and safety. The refuge and its permittees (AGFD, researchers, volunteers working on projects) drive over 700 miles per year in wilderness (1998) for management purposes. Border Patrol, U.S. Customs, and DEA have legitimate needs and were given special provisions to accomplish their missions in the Arizona Desert Wilderness Act of 1990.

- What roads can be eliminated and what degree of reclamation should occur?
  - How can the refuge reduce wilderness driving mileage?

#### (2.c) Recreation

The Wilderness Act of 1964 provides for public recreation and education. Service policy recognizes sensitive areas may need to be protected from overuse, and allows for regulated use through permit or complete closure (6 RM 8.9A).

- What levels of visitation and methods of controlling use should be employed?
  - What are the Limits of Acceptable Change for recreational use in the wilderness?
  - What visitation impacts monitoring is needed to determine if unacceptable

changes are occurring and help ascertain needed educational remedies or permit levels?

### (3) *Wildlife Dependent Visitor Services Issues*

The Refuge Improvement Act of 1997 identified hunting and fishing, wildlife observation and photography, and education and interpretation as priority uses on refuges when found to be compatible with refuge purposes.

The refuge is open to hunting, wildlife observation and photography, hiking, camping, environmental education, and interpretation. Its size, remoteness, wilderness character, and desert environment offer a unique experience for visitors. All visitors must obtain an entry permit, sign a release form for the military, and restrict vehicle travel to 4WD along two access corridors to the wilderness, and one non-wilderness road. The main travel corridor is along El Camino del Diablo, a state historic trail.

### (3.a) Permitting and Access

Permits were established in 1975 at the request of the military to inform the public of hazards they may encounter on areas covered by the military withdrawal. They also serve to establish contact with visitors and ensure that visitors are aware of refuge and wilderness regulations, provide the refuge with visitation data, and inform visitors of hazards that might be encountered in a primitive desert environment. Some participants felt that the process is too complex with different permits required for BMGR and refuge lands, and because the refuge office is not open on weekends when most visitation occurs. Some participants felt there are too many visitors already and feel that any relaxation in the permit system would result in increased resource impacts and limit the refuge's ability to set use limits and track visitation. The refuge and BMGR have since initiated an integrated permit system that has also drawn criticism. Opponents feel that access is not limited enough and the refuge has lost its ability to provide information about the refuge and consideration for its natural resources. Proponents like the convenience of obtaining only one permit for the entire year and the increase in their availability.

- What permit system would facilitate visitor access, provide needed visitation data to the refuge, and educate and inform visitors as to refuge regulations and resources and methods to reduce their impacts?

- What other strategies could help reduce visitor impacts?

### (3.b) Motorized Access and Vehicle Restrictions in Non-Wilderness

Visitors and local residents have expressed an interest in additional vehicular access to non-wilderness areas of the refuge which could enhance visitors enjoyment and local tourism.

- What type of access should be provided?
- Is there a non-wilderness route that does not require 4WD and would provide wildlife observation opportunities without negatively impacting bighorn sheep or pronghorn populations?

### (3.c) Hunting

The refuge is currently open to desert bighorn sheep hunting for which the State issues 1–7 permits each year. In addition to the actual hunt, the permittees usually take several trips in advance of the season to scout the area with friends. Hunting was established as a priority public use for refuges by the Refuge Improvement Act. This means that when found to be compatible and appropriate for a refuge, it is one of the six activities to be given priority consideration. Some participants would like to see hunting opportunities expanded to deer and small game, and others would like to see all hunting eliminated. Vehicle access is limited to the public corridors. The use of horse/pack animals is permitted by Special Use Permit.

- What type of hunting experience and for which species should be offered at Cabeza Prieta NWR?

### (3.d) Environmental Education and Interpretation

The refuge has a Visitor Center located within the town of Ajo, an orientation video program, modest exhibits, an Outdoor Recreation Planner and volunteers who conduct tours and staff the visitor center, cooperates in JUNTOS—a school educational program, and offers monthly natural history programs coordinated by the Cabeza Prieta Natural History Association during the winter season.

- What projects and activities should the refuge initiate to increase understanding and protection of Sonoran Desert resources and the role the Service plays in support of the ecosystem?

### (3.e) Other Public Uses: Backpacking, Campfires, Camping, Horseback Riding, Rock Climbing

Other uses that are permitted because they are either related to participation in priority public uses or wilderness appreciation include hiking and backpacking (including camping), and

commercial guided tours. The manner in which these activities are allowed was addressed in compatibility determinations completed System-wide in 1994. Horseback riding was found to be compatible with restrictions provided for in a special use permit. Rock climbing was determined to be incompatible but was to be addressed in the CCP to determine if restrictions could make the activities compatible.

- What recreational activities other than the priority uses should be permitted?
- What restrictions should be used (if any) to ensure compatibility and what educational efforts could minimize the impact of these activities?
- What impact monitoring efforts should be initiated?

### (4) *Cultural Resource Management Issues*

- What actions need to be taken to better understand and protect cultural and historical resources on the Cabeza Prieta NWR?

- What Native American interests need to be identified and what cooperative efforts need to be considered and set in place prior to taking action?

### (5) *Border Law Enforcement and Military Use Issues*

Border Patrol, Customs, and DEA were provided special provisions by the Arizona Desert Wilderness Act of 1990 to permit continued enforcement activities. Both the illegal traffickers and the agents performing their duty produce impacts. This CCP will address ways to minimize those impacts.

- To what degree are illegal drug trafficking and illegal immigration contributing to harmful impacts to habitat and wildlife?
- What cooperative efforts can be implemented to reduce Border Patrol and Customs Service impacts on refuge resources?
- What level of refuge law enforcement is needed?

The Refuge was not included in the recent military withdrawal, but language in the act does stipulate continued military use. The act extends the current agreement and provides for amendments to revise low-level training routes, establish new or enlarged buffer zones closed to public use, and to accommodate maintenance, upgrade, replacement, or installation of existing or new ground instrumentation that does not create increased impacts already permitted under the Arizona Desert Wilderness Act of 1990. (Note: since this legislation is newer than the

EA process, this issue has not yet been addressed by a management objective).

- What would be the effect of any decrease in flight-level restrictions?
- What buffer zones are needed to assure public safety for critical training?
- What changes to ground instrumentation are being proposed?

The Arizona Desert Wilderness Act of 1990 includes a special provision for continued military operations at Cabeza Prieta NWR. The potential impacts from military activities include the following: visual and noise disturbance, disturbance to wildlife behavior, aircraft collisions with wildlife, and impacts caused by live fire and military debris.

- How can the refuge reduce impacts caused by authorized military operations (tow dart and other debris removal, accident response protocol, entry without permit, expansion of low level flights)?

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the plan and EIS. Comments and participation in this scoping process are solicited.

We estimate that the draft CCP/ Environmental Impact Statement will be available to the public in the winter of 2000.

Dated: April 3, 2000.

**Geoffrey L. Haskett,**

*Acting Regional Director, Region 2,  
Albuquerque, New Mexico.*

[FR Doc. 00–9048 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Draft Environmental Impact Statement; Notice of Availability

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that a draft environmental impact statement (Draft EIS) for the comprehensive conservation plan and

boundary revision for the Stillwater National Wildlife Refuge (NWR) Complex located in Churchill and Washoe Counties, Nevada will be available for public review beginning April 14, 2000. Stillwater NWR Complex includes Stillwater NWR, Stillwater Wildlife Management Area (WMA), Fallon NWR, and Anaho Island NWR. Comments and suggestions are invited. All comments, including names and addresses will become part of the administrative record and may be released.

**DATES:** The comment period for this Draft EIS will extend from April 14, 2000 to June 12, 2000. Comments received will be considered during preparation of the Final Environmental Impact Statement. Open house meetings will be held on April 26 and 27, 2000 (see below for details on locations).

**ADDRESSES:** Comments should be addressed to: Kim Hanson, Refuge Manager, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, Nevada 89407, (775) 423–5128. The open-house schedule is: April 26, 2000, from 3:00 to 7:30 p.m. at the Fallon Convention Center, 100 Campus Way, Fallon, Nevada and April 27, 2000, from 3:00 to 7:30 p.m. at the Department of the Interior Building, 1340 Financial Boulevard, Reno, Nevada.

Copies of the Draft EIS may be inspected at the following locations: U.S. Fish and Wildlife Service, Division of Planning, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Stillwater NWR Complex, 1000 Auction Road, Fallon, NV 89406; Churchill County Library, 553 South Main Street, Fallon, NV 89406; Carson City Library, 900 North Roop Street, Carson City, NV 89701; Downtown Reno Library, 301 S. Center Street, Reno, NV 89501. Individuals wishing to receive a copy of the Draft EIS or Summary for review should immediately contact the Stillwater NWR office (address and phone number provided above). The Summary document can be viewed on the Service's regional web site: [www.r1/fws/gov/planning/plnhome.html](http://www.r1/fws/gov/planning/plnhome.html).

**FOR FURTHER INFORMATION CONTACT:** Kim Hanson, Stillwater NWR Complex (775–423–5128) or Don DeLong, CA/NV Refuge Planning Office (916–414–6500).

**SUPPLEMENTARY INFORMATION:** The Stillwater NWR Complex currently includes Stillwater NWR, Stillwater Wildlife Management Area (WMA), Fallon NWR, which are located in west-central Nevada, about six miles northeast of Fallon, Churchill County, and Anaho Island NWR, located about 30 miles northeast of Reno, Nevada, in Washoe County. Stillwater NWR is

about 79,570 acres of Federal land, Stillwater WMA about 65,603 acres, and Fallon NWR about 17,848 acres, for a combined total of 163,021 acres of Federal land. Non-Federal inholdings within the approved boundaries are about 59,708 acres. Anaho Island NWR encompasses the entire island, which has fluctuated in size from 220 to 745 acres in recent history due to the fluctuating water levels of Pyramid Lake. In July 1997, it was an estimated 575 acres.

Anaho Island NWR was established in 1913 by Executive Order 1819 as a “\* \* \* preserve and breeding ground for native birds.” Public Law 101–618 (§ 210(b)(2)) more narrowly defined the purpose of Anaho Island NWR, stating that it was to be managed and administered “\* \* \* for the benefit and protection of colonial-nesting species and other migratory birds.” The Public Law also recognized that Anaho Island NWR is part of the Pyramid Lake Indian Reservation, but it is to be managed and administered by the Service as a component of the National Wildlife Refuge System (Refuge System).

Fallon NWR was established in 1931 by Executive Order 5606 “as a refuge and breeding ground for birds and other wild animals.” It is located at the terminus of the Carson River and encompasses the delta wetlands of the river.

Stillwater WMA and Stillwater NWR were established through a 50-year agreement (Tripartite Agreement) signed in 1948 by the Truckee-Carson Irrigation District (TCID), Nevada State Board of Fish and Game Commissioners (Nevada Division of Wildlife), and the Service. Although the Tripartite Agreement expired on November 26, 1998, the Service continues to cooperatively manage the Stillwater WMA with the U.S. Bureau of Reclamation under most provisions of the Tripartite Agreement. Stillwater WMA, comprised mainly of U.S. Bureau of Reclamation withdrawn public lands, was established in 1948 for the purposes of conserving and managing wildlife and their habitat, and for public hunting. Stillwater NWR was established in 1949 as a wildlife sanctuary (closed to hunting) adjacent to the public hunting area.

In 1990, the approved boundary of Stillwater NWR was expanded, under subsection 206(b)(1) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Title II of Pub. L. 101–618), to encompass Stillwater Marsh, most of which was previously in the Stillwater WMA. In addition to the boundary expansion, Public Law 101–618 also outlined four purposes for which the Service must manage

Stillwater NWR: (1) maintaining and restoring natural biological diversity within the refuge; (2) providing for the conservation and management of fish and wildlife and their habitats within the refuge; (3) fulfilling international treaty obligations of the United States with respect to fish and wildlife; and (4) providing opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation.

Each alternative in the Draft EIS consists of two main parts: (1) a boundary revision for Stillwater NWR, and (2) the framework of a comprehensive conservation plan, including refuge goals, objectives, and strategies for achieving the purposes for which each refuge was established and for contributing toward the mission of the Refuge System.

### Boundary Revision

Public Law 101-618 authorized the Secretary of the Interior (Secretary) to recommend to Congress boundary revisions to Stillwater NWR that may be appropriate to carry out the purposes of the refuge and to facilitate the protection and enhancement of Lahontan Valley wetland habitat. The law authorized the Secretary to recommend the transfer of any Bureau of Reclamation withdrawn public lands within the existing wildlife use areas in the Lahontan Valley to the Service for addition to the Refuge System. Furthermore it authorized the identification of lands in the Lahontan Valley currently under the jurisdiction of the Service that no longer warrant continued status as units of the Refuge System.

### Comprehensive Conservation Plan

A comprehensive conservation plan is required by the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 6688dd *et seq.*), as amended. The purpose of developing a comprehensive conservation plan for the Stillwater NWR Complex is to provide managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the Refuge System, consistent with sound principles of fish and wildlife conservation and legal mandates. In addition to outlining broad management direction on conserving wildlife and their habitat, the comprehensive conservation plan will highlight wildlife-dependent recreation opportunities available to the public, including opportunities for hunting, environmental education, and wildlife observation and photography.

### Draft EIS Issues and Alternatives Being Considered

Six major issues were identified through scoping. They are (1) potential effects on populations of fish, wildlife, and plants, (2) potential effects on habitat and ecosystem functioning, (3) potential effects on recreational, educational, and interpretive opportunities, (4) potential effects on the local agriculture and socio-economy, and the Newlands irrigation project, (5) potential effects on cultural resources, and (6) potential effects on Naval Air Station-Fallon operations.

The Draft EIS identifies and provides an evaluation of four alternative boundaries for Stillwater NWR and management approaches for managing the Stillwater NWR Complex for the next 15 years. The four alternatives considered in detail in the Draft EIS are as follows. Alternative A (No Action Alternative) would retain the existing boundaries and entails baseline management as outlined in the 1987 Management Plan for Stillwater WMA and modified by the U.S. Fish and Wildlife Service's (Service's) water-rights acquisition program. Water rights acquired for refuge wetlands would continue to be delivered to the refuge according to the traditional agricultural seasonal-pattern of delivery in the irrigation district. Habitat management would emphasize breeding habitat for waterfowl and other waterbirds and would also provide for the needs of migrating and wintering waterfowl; livestock grazing and muskrat trapping would be managed commensurate with wildlife objectives on a large part of the area; and hunting remain the priority public use and would continue to be a coequal purpose with wildlife conservation.

Alternative B would result in the lands within Stillwater WMA reverting back to U.S. Bureau of Reclamation or public land status, thus reducing the amount of Federal land managed primarily for wildlife conservation in the Lahontan Valley. This alternative would focus on providing fall and winter habitat for waterfowl on Stillwater NWR (and would emphasize fall deliveries of acquired water rights), but would also provide habitat for breeding waterbirds. Livestock grazing and muskrat trapping would only be used as a habitat management tool. Opportunities for waterfowl hunting on Stillwater NWR would continue to be emphasized, although opportunities for wildlife viewing and environmental education would be expanded. Providing breeding habitat for

waterbirds would be emphasized on Fallon NWR.

Under Alternative C (Service's Preferred Alternative), Stillwater NWR would be expanded to include most of Stillwater WMA and Fallon NWR and to include additional riparian and dune habitat, although the overall amount of Federal land managed for wildlife conservation in the Lahontan Valley would decline. This alternative would emphasize the approximation of natural biological diversity, including breeding habitat for waterbirds. The natural seasonal pattern of water inflow would be approximated, with adjustments to minimize nest flooding and to enhance fall and winter habitat for waterfowl. Livestock grazing would have limited application in the habitat management program, and muskrat trapping would primarily be undertaken to prevent damage to water-control structures. Waterfowl hunting would continue to be an integral part of the public use program under Alternative C, but environmental education and wildlife observation would receive considerably greater emphasis.

Alternative D would expand the boundary of Stillwater NWR to include all of Stillwater WMA and Fallon NWR and additional riparian and dune habitat. This alternative would focus on restoring natural hydrologic patterns and other ecological processes. Protection and restoration of riparian habitat would receive enhanced emphasis, and livestock grazing and muskrat trapping would not be used in the habitat management program and would be prohibited. Public use management would focus on providing opportunities for wildlife observation and environmental education, and hunting opportunities would diminish.

Maps of each alternative boundary and public use zones are provided in the Draft EIS and summary document. In all alternatives, Anaho Island NWR would be managed much as it has in the past, with a continued emphasis on protecting the nesting colony of American white pelicans and other colony-nesting birds that use the island.

Other governmental agencies, tribes, and members of the general public contributed to the planning and evaluation of the Draft EIS. The Notice of Intent to prepare an EIS was published in the **Federal Register** on March 14, 1997 (62 FR 12245) by the Department of the Interior. The Service has given presentations to county officials, conservation groups, other interested parties and the media, and informed the public through intermittent distribution of planning updates. Copies of the Draft EIS or a

Summary have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

Dated: April 6, 2000.

**Elizabeth H. Stevens,**

*Acting CA/NV Operations Manager.*

[FR Doc. 00-9047 Filed 4-13-00; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Migratory Bird Permits; Environmental Impact Statement on Double-Crested Cormorant Management

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) invites public participation in the scoping process for an Environmental Impact Statement (EIS) on the management of the double-crested cormorant in the United States. We are preparing this EIS under the authority of the National Environmental Policy Act and the Migratory Bird Treaty Act. The EIS will consider a range of management alternatives to address population expansion of the double-crested cormorant. This notice describes issues of concern and possible management alternatives; invites further public participation in the scoping process; identifies the locations, dates, and times of public scoping meetings; and identifies the Service official to whom comments may be directed.

**DATES:** Written comments regarding EIS scoping should be submitted by June 16, 2000, to the address below. Dates and times for the ten public scoping hearings are listed in the table under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Written comments on the proposed EIS and management plan can be sent by the following two methods:

(1) by mail to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203; or (2) by email to [cormorant\\_eis@fws.gov](mailto:cormorant_eis@fws.gov).

The public may inspect comments during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. The scoping hearings will be held at the locations listed in the table under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Office of Migratory Bird Management, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:** On November 8, 1999, we published a notice of intent (64 FR 60826) to prepare an EIS and accompanying national management plan to address impacts caused by population and range expansion of the double-crested cormorant in the contiguous United States. This action is in response to increasing reports of resource conflicts between humans and cormorants. In addition to encouraging public input, we are involving natural resource agencies with jurisdiction or expertise in this issue, including U.S. Department of Agriculture/Animal and Plant Health Inspection Service/Wildlife Services, a cooperating agency in the development of the EIS, and concerned State agencies, especially those of Michigan, Vermont, Minnesota, Texas, and New York, who will participate through the International Association of Fish and Wildlife Agencies.

#### Double-Crested Cormorant Populations

The double-crested cormorant (*Phalacrocorax auritus*), a species native to the 48 contiguous United States and Alaska, has been federally protected by the Migratory Bird Treaty Act since 1972. This protected status, in addition to decreased levels of organochlorine contaminants in the environment and increased food availability, has contributed to dramatic population increases of this large, fish-eating waterbird over the past two-and-a-half decades.

The size of the North American breeding population has been estimated at about 372,000 pairs, or 852 colonies (Tyson *et al.* 1997). Hatch (1995) estimated a total population of 1 million-2 million birds. The double-crested cormorant breeds widely throughout much of the coastal and interior portions of the United States. It has been found breeding in 46 of the 48 contiguous United States. However, it is not uniformly distributed across this broad area. Greater than 60 percent of the breeding birds belong to the Interior Population. This is the fastest growing of the six major North American breeding populations (Hatch 1995), which includes the Great Lakes basin and northern prairie States and provinces. From 1970-1991, in the American and Canadian Great Lakes region, the number of double-crested cormorant nests increased from 89 to 38,000, an average growth rate of 29 percent (Weseloh *et al.* 1995). The contiguous United States breeding population increased at an average rate of 6.1 percent per year from 1966-1994 (Sauer *et al.* 1996).

In many parts of the United States, increased cormorant populations have led to conflicts with humans and various natural resources. Such conflicts include concerns over impacts to local economies, human health, the aquacultural industry, vegetation, fish populations, and bird populations. Management actions that we presently permit include population monitoring and research; information and education efforts; harassment; fitting of exclusionary devices at aquacultural facilities; issuance of depredation permits to take cormorants, their nests, or their eggs; and a Depredation Order (63 FR 10560) for taking birds at aquacultural facilities in 13 States. The preparation of an EIS is necessary in order to analyze alternative management strategies in the development of a national cormorant management plan that will more effectively deal with conflicts.

#### Alternatives

As stated in the notice of intent, we will develop management alternatives to be considered in the EIS after the scoping process, based on the Service's mission and the comments received during scoping. As of March 3, 2000, we had received 205 written comments in response to our notice of intent. From those letters, the following management options were identified, in order of frequency:

1. Control/reduce cormorant populations.
2. Protect cormorants.
3. Initiate a hunting season on cormorants.
4. Remove cormorants from protection of Migratory Bird Treaty Act.
5. Oil cormorant eggs.
6. Use population objectives in cormorant management.
7. Do not develop a management plan as one is not needed.
8. Expand Depredation Order to other States.
9. Let States manage cormorants.
10. Change depredation permit policy.
11. Emphasize non-lethal control.
12. Give USDA/APHIS/Wildlife Services more authority.

We are soliciting your comments on these options and any other issues, options, and impacts to be addressed in the EIS.

#### Issue Resolution and Environmental Review

After completion of the scoping process for the EIS, we will prepare a discussion of the potential effects, by alternative, which will include, but will not be limited to, the following areas: (1) Double-crested cormorant populations;

(2) other bird populations; (3) native and sport fish populations; (4) vegetation; (5) aquacultural stock; and (6) socioeconomic factors.

We will conduct an environmental review of the management alternatives in accordance with the requirements of

the National Environmental Policy Act, as appropriate. We are furnishing this notice in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS.

### Public Scoping Meetings

Ten public scoping meetings will be held at the locations and times listed below:

Date	City	Location	Time
April 25, 2000	Washington, DC	Department of Interior Building Auditorium, 1849 C Street, NW.	10 am.
April 27, 2000	Portland, Oregon	Red Lion Hotel Coliseum, 1225 N. Thunderbird Way	7 pm.
May 9, 2000	Burlington, Vermont	Clarion Hotel and Convention Center, 1117 Williston Road.	7 pm.
May 10, 2000	Watertown, New York	Dulles State Office Building Auditorium, 317 Washington Street.	7 pm.
May 11, 2000	Syracuse, New York	Carousel Center Mall, Skydeck, Sixth Level, 9090 Carousel Center Drive.	7 pm.
May 15, 2000	Green Bay, Wisconsin	Ramada Inn, 2750 Ramada Way	7 pm.
May 16, 2000	Mackinaw City, Michigan	Mackinaw City Public Schools, Gymnasium, 609 West Central.	7 pm.
May 17, 2000	Hauppauge, New York	Windham Watch Hotel, 1717 Vanderbilt Motor Parkway.	7 pm.
May 22, 2000	Jackson, Mississippi	Primos Northgate, Convention Hall B, 4330 N. State Street.	7 pm.
May 23, 2000	Athens, Texas	Texas Freshwater Fisheries Center, 5550 Farm Market Road 2495.	7 pm.

### References Cited

A complete list of all references cited is available from the Office of Migratory Bird Management (see **ADDRESSES** section).

**Authorship:** The primary author of this notice is Shauna Hanisch, Office of Migratory Bird Management.

Dated: April 7, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish & Wildlife Service.*

[FR Doc. 00-9281 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Draft Revised Fish and Wildlife Service National Environmental Policy Act Guidance; Fish and Wildlife Manual, Part 550, Chapter 1 and 2

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or We) is issuing this notice to invite public comments on draft revised National Environmental Policy Act guidelines in the Service's Fish and Wildlife Manual, Part 550, Chapters 1 and 2. The revised draft guidelines can be obtained by accessing <http://www.fws.gov/r9esnepa/draft550.htm>, or by calling or writing the contacts listed in **ADDRESSES** below.

**DATES:** Written comments on the draft revised guidelines should be submitted on or before May 31, 2000, to the addresses below.

**ADDRESSES:** Written comments on the notice can be sent to Dr. Benjamin N. Tuggle, Chief, Division of Habitat Conservation, 1849 C Street, NW., 400 Arlington Square Building, Washington, DC 20240; or they can be electronically transmitted to [don\\_peterson@fws.gov](mailto:don_peterson@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Don Peterson, Washington Office Environmental Coordinator, at (703) 358-2183, or [don\\_peterson@fws.gov](mailto:don_peterson@fws.gov).

**SUPPLEMENTARY INFORMATION:** The draft revised NEPA guidance is procedural in nature and provides revised guidance for our personnel on the technical aspects of how to prepare environmental impact statements and environmental assessments for actions proposed by the Service. Part 550, Chapter 1, updates our organizational responsibilities for complying with NEPA. Part 550, Chapter 2, provides revised updated guidance on scoping, encourages greater participation in cooperative agency agreements, clarifies the differences in content and scope of EAs and EISs, clarifies and encourages the NEPA document adoption process, and promotes NEPA streamlining techniques. The notice of availability of the draft revised guidance is published in the **Federal Register** in accordance with 40 CFR 1507.3. The draft revised guidance does not address our requirements for when to prepare an EIS or EA, or when a categorical exclusion

from NEPA documentation is applicable for a proposed Service action. That guidance remains unchanged and is found in the Department of the Interior Manual in 516 DM 6, Appendix 1.

When finalized, the guidance will be included with previous revisions made to our NEPA guidance on documenting and implementing decisions in Part 550, Chapter 3 (published in the Fish and Wildlife Service's Manual on March 29, 1996), and to our NEPA procedures in the Department of the Interior Manual in Part 516 DM Chapter 6, Appendix 1 (62 FR 2380, January 16, 1997) on when to prepare an EA or an EIS, and when a categorical exclusion from NEPA documentation applies. The draft revised guidance updates and supersedes Service NEPA guidance for internal compliance in Part 30 AM Chapter 2 and 3, dated September 23, 1983.

The draft revised guidance streamlines and simplifies the current guidance (published in 1983) by relocating cited regulations, procedures, guidance, executive orders, and other documents to the Service's NEPA Reference Handbook, and by making the guidance more readable and concise. The Service NEPA Reference Handbook can be accessed at <http://www.fws.gov/r9esnepa>.

Dated: March 27, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00-9282 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-55-U**

**DEPARTMENT OF THE INTERIOR****Geological Survey****Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

A request revising and extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*Title:* Mine, Development, and Minerals Information Supplement.

*Current OMB approval number:* 1028-0060.

*Abstract:* Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

*Bureau form number:* 9-4000-A.

*Frequency:* Annual.

*Description of respondents:* Nonfuel Mineral Producers and Exploration Operations.

*Annual Responses:* 337.

*Annual burden hours:* 253.

*Bureau clearance officer:* John Cordyack, 703-648-7313.

**Keith L. Harris,**

*Acting Chief Scientist, Minerals Information Team.*

[FR Doc. 00-9277 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-47-M**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Draft Environmental Impact Statement (DEIS) for the Colville Indian Reservation Integrated Resource Management Plan, Colville Confederated Tribes, Colville Reservation, Washington**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs intends to file a Draft Environmental Impact Statement (DEIS) for an Integrated Resource Management Plan (IRMP) for the Colville Indian Reservation, Washington, with the U.S. Environmental Protection Agency, and that the DEIS is now available for public review. Brief descriptions of the proposed action and alternatives follow as supplementary information. This notice also announces a public hearing to receive public comments on the DEIS. **DATES:** Written comments must arrive by June 12, 2000. The public hearing on the DEIS will be held on April 27, 2000, starting at 7:00 p.m.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to William Nicholson, Superintendent, Colville Agency, Bureau of Indian Affairs, P.O. Box 111, Nespelem, Washington 99155-0111. You may also comment via the Internet to nicholson\_colville@yahoo.com. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (509) 634-2320.

Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours, 7:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to

withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The DEIS is available for review at the Colville Agency. To obtain a copy, you may contact John St. Pierre, Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155-0150, telephone (509) 634-2200. Copies of the DEIS have been sent to all agencies and individuals who participated in the scoping process, or who previously requested copies.

The public hearing will be held in the Conference Room at the Bureau of Indian Affairs, Colville Agency, Nespelem, Washington.

**FOR FURTHER INFORMATION CONTACT:** William Nicholson, (509) 634-2316.

**SUPPLEMENTARY INFORMATION:** The Bureau of Indian Affairs is proposing to approve an IRMP for the approximately 1,392,265 acre Colville Indian Reservation, for the period 2000-2014. This DEIS analyzes the impacts of the proposed action, four action alternatives, and no action. Under the no action alternative (Alternative 1), there would be no change in the existing management. About 1,071.2 million board feet (MMBF) of timber would be harvested across 157,989 acres, and the range management units and allotments on the reservation would continue under current management direction. The proposed action (Alternative 2) would implement the IRMP developed by the Colville Confederated Tribes. About 953.1 MMBF of timber would be harvested across 156,989 acres and there would be a 15 percent general reduction in range use.

Alternative 3, the IRMP with additional watershed health and wildlife habitat emphasis, calls for the harvesting of about 818.7 MMBF of timber across 119,683 acres and the withdrawal of about 269,000 acres of range allotments.

Alternative 4, the IRMP with stand structural/stage correction emphasis, emphasizes intermediate harvesting to move the structural stage class of stands on the reservation towards the desired future conditions. About 751.9 MMBF of timber would be harvested across

157,573 acres. Allowable animal unit months (AUMs) would be doubled to 121,800.

Alternative 5, the IRMP with forest health emphasis, emphasizes regenerative harvesting to reduce the existing impacts of insects and disease.

Alternative 6, the IRMP with additional forest health, watershed health and wildlife habitat emphasis, places an additional emphasis on forest and watershed health along with fish and wildlife habitat. About 1,105.1 MMBF of timber would be harvested across 123,556 acres and allowable AUM's would be reduced by 50 percent.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 11, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00-9396 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-02-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) intends to file a Final Programmatic Environmental Impact Statement (FPEIS) for the proposed Navajo Nation Ten-Year Forest Management Plan with the U.S. Environmental Protection Agency, for public review and comment. The FPEIS, prepared by the BIA in cooperation with the Navajo Nation, describes alternate ways to promote the protection and sustained use of forest resources and to guide the development of multi-year implementation programs for the Navajo Nation Forestry Department. A description of the project location and of the environmental issues addressed in the FPEIS follow as supplementary information.

**DATES:** Comments must arrive by June 12, 2000.

**ADDRESSES:** If you wish to comment, you may submit written comments by any one of several methods. You may mail or hand carry comments to Harold D. Russell, Regional Forester, Bureau of Indian Affairs, Navajo Regional Office, P.O. Box 1060, Gallup, New Mexico 87305. You may also comment via the Internet to HaroldRussell@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (502) 729-7228.

Comments, including names and home addresses of respondents, will be available for public review at the above during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The FPEIS is available for review at two locations: (1) The Branch of Environmental Services, Navajo Area Office, Federal Building, 301 West Hill, Gallup, New Mexico; and (2) the Branch of Forestry, Bureau of Indian Affairs, 1 mile north on Route 12, Fort Defiance, Arizona. To obtain a copy of the FPEIS, please write to the Navajo Nation Forestry Department, P.O. Box 230, Fort Defiance, Arizona 86504, or call (520) 729-4007.

**FOR FURTHER INFORMATION CONTACT:** Harold D. Russell, (520) 729-7228.

**SUPPLEMENTARY INFORMATION:** The proposed action is to adopt a ten-year management plan for the Navajo Forest. The Navajo Forest lies in the Chuska Mountains and Defiance Plateau areas of the Navajo Nation, along the Arizona-New Mexico border. The area encompasses nearly 600,000 acres.

The FPEIS presents a preferred alternative, the no action alternative and three other action alternatives. Under the preferred alternative, approximately

79,500 acres out of 253,754 acres designated as commercial timberland would be harvested over the next ten years. Individual treatment areas would be limited to 100 acres or less, and harvesting would incorporate a combination of even-aged and uneven-aged management systems designed to promote more diversity in the vegetative structure. This alternative also designates 74,735 acres as Special Management Areas (SMAs), which would be excluded from commercial timberland in order to protect critical wildlife habitat and vital watershed areas, even where these SMAs are located within the most productive areas of the forest.

Timber protection activities under this alternative include fire prevention, prescribed burns, trespass control and insect and disease control. Other activities include monitoring and mitigation, in accordance with published plans, guidelines or handbooks referenced in the FPEIS.

The no action alternative continues current levels of production—approximately 88,000 acres over the next ten years, with even-aged management and without SMA's. The three other action alternatives include: (1) No timber harvesting and no SMA's; (2) even-aged management, with a lower rate of harvest—approximately 79,000 acres over the next ten years—than the no action alternative, and with SMA's; and (3) uneven-aged management, with approximately 84,400 acres to be harvested over the next ten years and without SMA's. All of the alternatives include timber protection plus monitoring and/or mitigation measures.

The FPEIS addresses the environmental issues identified during public scoping. These include timber resources, other forest resources, water resources, biological resources, air quality, cultural resources and socio-economics.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 11, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00-9397 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-02-M**

**DEPARTMENT OF DEFENSE****Department of the Navy****DEPARTMENT OF THE INTERIOR****Bureau of Land Management****Record of Decision for the Proposed Fallon Range Training Complex Requirements at Naval Air Station Fallon, Nevada**

**AGENCY:** Department of the Navy, Department of Defense, Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of Record of Decision.

**SUMMARY:** The Department of the Navy and the Bureau of Land Management, after carefully weighing the environmental and socioeconomic implications, public input, and technical considerations of the alternative studied, announce their combined decisions to implement the preferred alternative, Alternative II, identified in the co-authored Final Environmental Impact Statement for the Proposed Fallon Range Training Complex Requirements at Naval Air Station Fallon, Nevada. This action consists of improvements to the Fallon Range Training Complex to meet Chief of Naval Operations-mandated training requirements; improvements will occur on existing Navy-administered lands and on BLM-administered public lands.

**FOR FURTHER INFORMATION CONTACT:** Naval Strike and Air Warfare Center at Naval Air Station Fallon, Nevada, Attn: Mr. John Smith, EIS Team Member, 4755 Pasture Road, Fallon, Nevada 89496-5000, telephone (775) 426-2103/2101, fax (775) 426-2104, e-mail smithj@nsawc.navy.mil or Bureau of Land Management Carson City Field Office, Attn: Ms. Terri Knutson EIS Project Manager, 5665 Morgan Mill Road, Carson City, Nevada 89701, telephone (775) 885-6156, fax (775) 8885-6147, e-mail tknutson@nv.blm.gov.

**SUPPLEMENTARY INFORMATION:** The text of the entire Record of Decision is provided as follows:

The Department of the Navy (Navy) and Bureau of Land Management (BLM), pursuant to section 102 (c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. section 4331 *et seq.*) and the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures (40 CFR parts 1500-1508), hereby announce their decision to implement changes necessary at the Fallon Range Training Complex to meet Chief of

Naval Operations-mandated training requirements resulting from the real-world threat environment. These changes will allow Navy to update and consolidate Navy training on public and Navy-administered lands and update existing airspace parameters overlying these lands.

Changes include: Developing new fixed and mobile Electronic Warfare (EW) sites; developing new Tracking Instrumentation Subsystem (TIS) sites; developing additional targets at B-17 and B-19; laying fiber optic cable to B-16 and B-19; utilizing Navy-administered lands in Dixie Valley for close air support training; performing Hellfire missile and high altitude weapons delivery training at B-17 and B-20; and proposing changes to special use airspace.

**Process**

A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Fallon Range Training Complex Requirements at the Naval Air Station Fallon, Nevada was published in the **Federal Register** on December 21, 1998. Four public scoping meetings were held on January 20, 21, 27, and 28, 1999, in Eureka, Austin, Fallon, and Reno, Nevada, respectively.

A Notice of Availability (NOA) for the Draft EIS was published in the **Federal Register** on August 13, 1999. Public Hearings were held on September 8, 9, 21, 22, and 23, 1999, in Eureka, Austin, Gabbs, Fallon, and Reno, Nevada, respectively. Comments were received from 71 agencies, organizations, and individuals during the 90-day public comment period on the Draft EIS. The Final EIS addressed all oral and written comments.

The NOA for the Final EIS was published in the **Federal Register** on February 4, 2000. Newspaper advertisements noting the availability of the Final EIS were published in local and regional newspapers. Navy and BLM received 4 comment letters during the 30-day public comment period. All comments received were considered when preparing this ROD.

This ROD documents Navy's and BLM's decisions based upon the analysis of the effects of the proposed action and alternatives in the EIS. The jointly prepared Navy/BLM EIS allowed BLM to ensure that Navy actions proposed on public lands meet the BLM mission of managing public lands for multiple use. This EIS satisfies NEPA requirements for Navy-administered lands and BLM issuance of rights-of-way for Navy actions on public lands.

Airspace changes require rulemaking in accordance with Federal Aviation

Administration (FAA) Order 7400.2. Navy will submit a request to FAA for the airspace changes outlined in this ROD. The FAA will issue a separate ROD after its rulemaking process.

**Background**

This EIS was based on the Fallon Range Training Complex Requirements Document (Training Requirements Document) prepared by the Naval Strike and Air Warfare Center (NSAWC) at NAS Fallon, Nevada, in November 1998. The Training Requirements Document assessed and reported current and future training needs and operational requirements for NAS Fallon. The Training Requirements Document outlined changes necessary to both update and consolidate Navy training on public and Navy-administered lands and update existing airspace parameters overlying these lands. Alternatives were developed with input from federal, state, and local agencies, interested parties, Native American tribes, and an independent validation entity (Institute for Defense Analysis).

**Proposed Action and Alternatives**

The proposed action in this EIS included developing four 5.7-acre fixed EW sites on public lands in Edwards Creek Valley, Gabbs Valley, Smith Creek Valley, and Big Smoky Valley, three fixed EW sites on Navy-administered land in north Dixie Valley, at B-19, and at B-20, and up to 15 mobile sites on Navy-administered lands in the Dixie Valley; developing four 16-foot by 16-foot TIS sites on BLM-administered lands; developing live mortar ranges and helicopter ordnance and gunnery targets at B-17 and a rough terrain helicopter gunnery target at B-19; running fiber optic cable from NAS Fallon to the B-16 and B-19 training ranges; performing close air support training, including laser spotting, on Navy-administered lands in the Dixie Valley; performing Hellfire missile training and high altitude weapons delivery training at the B-17 and B-20 training ranges (new restricted area airspace will be needed above existing restricted area airspace to 35,000 feet above mean sea level (flight level (FL) 350) to accommodate high altitude weapons delivery training; and making adjustments to special use airspace to change the use times of the Reno MOA from 10 AM to 6 PM, Tuesday through Saturday, to 8 AM to 6 PM, Monday through Friday.

Alternative I included the same actions described for the proposed action except that the fixed EW sites on public lands will be reduced in size and the smaller fixed EW sites in the eastern

valleys will be supplemented with four or five mobile EW sites up to one-third acre per site in each valley for a total of 18 mobile sites.

Alternative II included the same actions described for the proposed action except that only two 5.7-acre fixed sites will be developed on public lands in Edwards Creek Valley and Gabbs Valley, and no fixed EW sites will be developed in Smith Creek Valley and Big Smoky Valley. To compensate for the lack of fixed EW sites in these two valleys, fixed communication relay towers on one-tenth acre of land will be developed. Five mobile EW sites will be developed in each of the four valleys for a total of 20 mobile sites.

Alternative III included the same actions described for the proposed action except that no new fixed EW sites will be developed on public lands. To compensate for the lack of fixed EW sites in the four eastern valleys, one fixed communication hub on one-tenth acre of land will be developed in Smith Creek Valley, three combination fixed communication hubs/mobile EW sites will be developed in the other valleys (one site per valley), and 19 mobile EW sites will be developed (up to five sites per valley). Also under Alternative III, the Navy will request a lower ceiling (FL 300 ) for new restricted area airspace.

Under the No Action Alternative, no new EW sites, TIS sites, B-17 and B-19 target improvements, or fiber optic cable routes will be developed. Airspace changes, Hellfire missile training, and high altitude weapons delivery training (above 18,000 feet MSL) will not occur. Present training activities will continue under existing conditions.

Measures were incorporated into the Proposed Action and Alternatives to reduce the level of impact to the environment. These measures consist of operating procedures Navy routinely applies to similar activities on its lands and that are required by the BLM for actions taken on public lands. These standard operating procedures include: Conducting biological and cultural resource surveys prior to surface disturbance; reducing visual effects by painting, shielding, or netting structures; reducing effects to roads; complying with all federal, state, and local government rules, regulations, and guidelines governing hazardous material use, storage, and transport; conducting laser operations in a manner to avoid human and environmental hazards; implementing noxious weed control measures and reclamation of abandoned sites; and continuing to coordinate aircraft activities with the FAA.

The environmentally preferred alternative is generally one that avoids or minimizes environmental impacts or results in a net beneficial environmental effect. In this case, the No Action Alternative is the environmentally preferred alternative because it will not result in any additional ground disturbance or changes in visual resources, although it will not allow for the increased flight altitude and corresponding reduction in noise levels that will be achieved in some of the other alternatives. The environmentally preferred alternative was not selected because it will be substantially less effective in meeting tactical and training mission requirements as set out in the Training Requirements Document. Alternative III is also environmentally preferable to the selected alternative, and will be as, or more, effective in meeting tactical and training requirements. Alternative III was not selected because communication technology is not yet sufficiently advanced or readily available to allow Navy to implement an all-mobile alternative at this time. Navy does not have the mobile EW equipment necessary to implement an all-mobile alternative, and developing and procuring the equipment necessary for the all-mobile alternative will be cost prohibitive. Navy will continue to monitor advances in communications technology and will consider whether to propose an all-mobile alternative in the future. If an all-mobile alternative becomes practical, Navy and BLM will determine, what, if any, additional environmental analysis is required before implementing such a proposal.

Based upon our review of the analysis of alternatives and public comments receiving during the NEPA process, Navy and BLM have selected Alternative II (the identified preferred alternative) with some modification to the two fixed EW sites on BLM-administered lands. Alternative II included two fixed 5.7-acre EW sites on public lands in Edwards Creek and Gabbs Valleys. The size of these two sites will be reduced to 3.0 acres each to decrease the area of surface disturbance on public lands. One fixed communications relay tower site in each of the Big Smoky and Smith Creek Valleys, and five mobile EW sites in each of the four valleys will be installed. Alternative II will also develop three fixed EW sites on Navy-administered land in North Dixie Valley, at B-19, and at B-20, up to 15 mobile EW sites on Navy administered lands in the Dixie Valley, four TIS sites on BLM-administered lands, live mortar ranges

and helicopter ordnance and gunnery targets at B-17, and a rough terrain helicopter gunnery target at B-19. Other actions included in Alternative II that will be implemented are: Running fiber optic cable from NAS Fallon to the B-16 and B-19 training ranges, performing close air support training, including laser spotting on Navy-administered lands in the Dixie Valley, performing Hellfire missile training and high altitude weapons delivery training at B-17 and B-20 training ranges, developing new vertical restricted airspace up to 35,000 feet MSL above existing restricted airspace in order to accommodate high altitude weapons delivery training, and making adjustments to special use airspace to change the use times of the Reno MOA from 10:00 AM to 6:00 PM, Tuesday through Saturday, to 8:00 AM to 6:00 PM, Monday through Friday. Alternative II addresses concerns voiced during the public review period on the greater sensitivity of Smith Creek Valley and Big Smoky Valley as well as meets Navy's training requirements.

#### **Environmental Impacts**

In the EIS, Navy and BLM analyzed direct, indirect, and cumulative effects to land use, airspace use, biological resources, geology, soils, and mineral resources, water resources, cultural resources, Native American religious concerns, visual resources, environmental justice and socioeconomic, recreation, grazing and wild horse and burro management, air quality, noise, public safety, and hazardous materials. There were no significant environmental impacts associated with the selected alternative; however, Navy and BLM will implement the standard operating procedures described both above and in the EIS, to reduce even further the impacts of the actions being taken. With the adoption of these standard operating procedures, Navy and BLM have exercised all practicable means to avoid or minimize harm from the alternative selected. Nevertheless, Navy and BLM will meet annually to review implementation of the selected alternative.

#### **Response to Comments Received Regarding the Final Environmental Impact Statement**

Navy and BLM received 4 comment letters on the Final EIS: one from a state agency, one from a special interest group, and two from individuals. The comments from the state agency and the special interest group were previously addressed in the Final EIS. One individual's comments were outside of

the scope of this EIS and require no further response. The other individual's comments misinterpreted the information presented in the EIS regarding the proposed change in the airspace ceiling. As discussed in Section 4.2 of the Final EIS, the proposed new airspace ceiling will be created on top of existing restricted airspace that overlies Navy's bombing ranges. This proposed change will *not* be applied throughout the FRTC MOA.

### Conclusions

In formulating combined decisions on implementing changes to update and consolidate training at the Fallon Range Training Complex, including changes on existing Navy-administered lands and on public lands administered by the BLM, Navy and BLM have considered the environmental and socioeconomic effects of the proposed action and alternatives and public input received on the Draft and final EISs.

After careful deliberation, we have determined that the preferred alternative, with reduced EW site size, provides the best combination of effectively meeting the training requirements of NAS Fallon, responding to the public concerns, and minimizing environmental effects.

Therefore, the Department of the Navy and the Bureau of Land Management have decided to implement the actions identified in the preferred alternative, as modified. Actions requiring FAA approval will be proposed for FAA rulemaking and will only be implemented if approved.

Although this EIS has been jointly prepared and has resulted in combined decisions, each agency's decision has been made pursuant to its individual responsibilities and authorities and each agency shall be responsible for its implementation.

### BLM Appeals Process

If a party other than the Navy is aggrieved by the approval of this EIS, the decision regarding use of public lands may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, part 4 and Form 1842-1. If an appeal is made, a notice of appeal must be filed at the Bureau of Land Management, Nevada State Office, 850 Harvard Way, PO Box 12000, Reno, Nevada 89520-0006 within 30 days after the date this decision has been issued. The appellant has the burden of showing that the decision being appealed is in error. A statement of reasons and any arguments the appellant wishes to present to justify reversal or modification of this decision

should be filed at the same time as the appeal.

If the appellant wishes to file a petition (request), pursuant to 43 CFR 4.21, for a stay (suspension) of the effectiveness of this decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards for obtaining a stay. Copies of the notice of appeal and petition for a stay must also be submitted to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If the appellant requests a stay, the appellant has the burden of proof to demonstrate that a stay should be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law or pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) The relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted and (4) whether the public interest favors granting the stay.

Dated: April 10, 2000.

**Elsie Munsell,**

*Deputy Assistant Secretary of the Navy  
(Environment and Safety).*

Dated: April 4, 2000

**John Singlaub,**

*Manager, Carson City Field Office.*

[FR Doc. 00-9368 Filed 4-13-00; 8:45 am]

**BILLING CODE 3810-FF-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-110-1060-DC]

#### Capture of Wild Horses From the West Douglas Herd Area, CO

**AGENCY:** White River Field Office, Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of public hearing and notice of intent to gather horses from the West Douglas Herd Area.

**SUMMARY:** The Bureau of Land Management, White River Field Office has scheduled the capture of wild horses from the West Douglas Herd Area. This removal is scheduled to start during the late summer of 2000 and continue until complete. A public

hearing regarding the capture of wild horses from the West Douglas Herd Area, South of Rangely, Colorado will be held at the White River Field Office, Bureau of Land Management.

**DATE AND ADDRESSES:** Hearing will be held in Meeker, Colorado at the White River Field Office, 73544 HWY 64, on May 15, 2000 at 7:00 pm.

**FOR FURTHER INFORMATION CONTACT:** Robert Fowler; White River Field Office; 73544 HWY 64, Meeker, Colorado, 81641; Telephone (970) 878-3601.

**James Cagney,**

*Associate White River Field Manager.*

[FR Doc. 00-6867 Filed 4-14-00; 8:45 am]

**BILLING CODE 4310-JB-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-910-00-0777-30]

#### Northeastern Great Basin Resource Advisory Council Meeting Location and Time

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Resource Advisory Council's meeting location and time.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the May 5, 2000 meeting includes: approval of minutes of the previous meeting, mining, wild horses, sage grouse, Great Basin Restoration Initiative, Land Health Standards, Off-Highway Vehicle Strategy Plan, Field Manager reports, identification of additional issues to be resolved and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

**DATES, TIMES, PLACE:** The time and location of the meeting is as follows:

Northeastern Great Basin Resource Advisory Council, Ely Field Office, 702 North Industrial Way, Nevada, 89301; May 5 starting at 9 a.m.; public comments will be at 11 a.m. and 3 p.m.; tentative adjournment at 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Curtis G. Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301-9408, telephone 775-289-1841.

**SUPPLEMENTARY INFORMATION:** The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

**Helen Hankins,**

*Field Office Manager, Elko Field Office.*  
[FR Doc. 00-9278 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-HC-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Management Pplan/Special Resource Study/Environmental Impact Statement, Shenandoah Valley Battlefields National Historic District, VA

**AGENCIES:** Shenandoah Valley Battlefields National Historic District Commission and National Park Service; Department of the Interior.

**ACTION:** Notice of availability and public review.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Shenandoah Valley Battlefields National Historic District Commission and the National Park Service announce the availability of a Draft Management Plan/Special Resource Study/Environmental Impact Statement (Plan/SRS/EIS) for the Shenandoah Valley Battlefields National Historic District. The document will be available for public review and comment beginning April 14, 2000 for 60 days. Public comments will be incorporated into the Final Plan/SRS/EIS.

Public meetings to review, comment, and refine the draft Plan/SRS/EIS will be held April 25, 2000 in Frederick County; April 27, 2000 in Shenandoah County; May 3, 2000 in Rockingham County; and Thursday May 4, 2000 in Highland County. Public notices of these meetings will also be announced via a newsletter to prior respondents/participants and local media. Comments from these meetings will also be

incorporated into the Final Plan/SRS/EIS. A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the Final Plan/SRS/EIS. After the no-action period, a Record of Decision will be sought from the Northeast Regional Director, National Park Service, and the Chairman, Shenandoah Valley Battlefields National Historic District Commission.

For further information, meeting time and locations, or to review a copy of the Draft Plan/SRS/EIS, contact: Shenandoah Valley Battlefields NHD Commission, P.O. Box 897, 8895 Collins Drive, New Market, VA 22844, (888) 689-4545.

Dated: March 31, 2000.

**Carrington Williams,**

*Chairman, Shenandoah Valley Battlefields National Historic District Commission.*

Dated: April 2, 2000.

**Marie Rust,**

*Northeast Regional Director, National Park Service Director.*

[FR Doc. 00-9294 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-70-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items in the Possession of the Department of Sociology, Gerontology, and Anthropology, Miami University, Oxford, OH

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Department of Sociology, Gerontology, and Anthropology, Miami University, Oxford, OH which meet the definition of "sacred object" under Section 2 of the Act.

The six cultural items consist of a record stick, Handsome Lake Revelation stick, condolence cane, a pair of dance garters, and a Delaware False Face mask.

In 1972, these six cultural items were purchased from Iroqrafts, on the Six Nations Reserve, Ontario, Canada by the Miami University Anthropology Museum.

Based on the original sales tags, these cultural items have been identified as Cayuga. During consultation, representatives of the Cayuga Nation of New York have indicated these six items are specific ceremonial objects needed by traditional Native American

religious leaders for the practice of traditional Native American religions by their present-day adherents.

Based on the above-mentioned information, officials of the Department of Sociology, Gerontology, and Anthropology, Miami University have determined that, pursuant to 43 CFR 10.2 (d)(3), these six cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Department of Sociology, Gerontology, and Anthropology, Miami University have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York and the Seneca Cayuga Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Mrs. Judith D. Spielbauer, Instructor, Department of Sociology, Gerontology, and Anthropology, Miami University, Oxford, OH 45056; telephone: (513) 529-1551, fax: (513) 529-8525 before May 15, 2000. Repatriation of these objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 7, 2000.

**G. Mark Schoepfle,**

*Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.*

[FR Doc. 00-9295 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-70-F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion for Native American Human Remains From the Norton Sound Region, AK in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from the Norton Sound Region,

AK in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Native Village of Unalakleet, the Native Village of Shaktoolik, the Native Village of St. Michael, the Stebbins Community Association, and the Bering Straits Native Foundation.

In 1969, human remains representing one individual were recovered from a site east of Kouwegok Slough near Unalakleet, AK during excavations conducted under the auspices of the University of Pennsylvania by archeologist Bruce Lutz. No known individual was identified. No associated funerary objects are present.

Based on excavation records and accession information provided by the collector, this individual has been identified as Native American from the Post-Norton period (after 1000 A.D.). No further information exists for this individual.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Unalakleet.

This notice has been sent to officials of the Native Village of Unalakleet, the Native Village of Shaktoolik, the Native Village of St. Michael, the Stebbins Community Association, and the Bering Straits Native Foundation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before May 15, 2000. Repatriation of the human remains to the Native Village of Unalakleet may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 7, 2000.

**G. Mark Schoepfle,**

*Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.*

[FR Doc. 00-9296 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-70-F**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP), and two technical training program course effectiveness evaluation forms. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 15, 2000, in order to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208-2783, or electronically to [jtreleas@osmre.gov](mailto:jtreleas@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1820.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP); and two technical training program course effectiveness evaluation forms.

OSM is requesting a 3-year term of approval for each information collection activity.

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

The OMB control numbers for these collections of information are 1029-0061 for Part 795, and 1029-0110 for the technical training effectiveness evaluation forms.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on December 22, 1999 (64 FR 71830). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

*Title:* 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

*OMB Control Number:* 1029-0061.

*Summary:* This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95-87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

*Bureau Form Number:* FS-6.

*Frequency of Collection:* Once per application.

*Description of Respondents:* Small operators, laboratories, and State regulatory authorities.

*Total Annual Responses:* 160.

*Total Annual Burden Hours:* 10,635 hours.

*Title:* Technical Training Program Course Effectiveness Evaluation.

*OMB Control Number:* 1029-0110.

*Summary:* Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

*Bureau Form Number:* None.

*Frequency of Collection:* On Occasion.

*Description of Respondents:* State regulatory authority and Tribal employees and their supervisors.

*Total Annual Responses:* 315.

*Total Annual Burden Hours:* 53 hours.

Send comments on the need for the collections of information for the performance of the functions of the

agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029-0061 for Part 795, and 1029-0110 for the technical training effectiveness evaluation forms.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to [jtreleas@osmre.gov](mailto:jtreleas@osmre.gov).

Dated: April 11, 2000.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 00-9362 Filed 4-13-00; 8:45 am]

**BILLING CODE 4310-05-M**

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following: (1) Notice of Termination, Suspension, Reduction or Increase in Payment Benefits (CM-908); and (2) Economic Survey Schedule (WH-1). Copies of the proposed information collection requests can be obtained by

contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 13, 2000.

**ADDRESSES:** Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0339 (this is not a toll-free number), fax (202) 693-1451.

#### SUPPLEMENTARY INFORMATION:

#### Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments

##### I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Mine Safety and Health Act of 1977. Under the Act, responsible coal mine operators or their representatives must provide benefit payments to eligible coal miners and dependents of coal miners who have contracted pneumoconiosis. Responsible operators who pay benefits are required to report any changes in the benefit amount, and the reasons for the change, to the Department of Labor.

##### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

##### III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to ensure that Division of Coal Mine Workers' Compensation regulations are followed and that the

new benefit amount is accurate and timely.

*Type of Review:* Extension.  
*Agency:* Employment Standards Administration.

*Title:* Notice of Termination, Suspension, Reduction or Increase in Benefit Payments.

*OMB Number:* 1215-0064.

*Agency Number:* CM-908.

*Affected Public:* Businesses or other for-profit.

*Total Respondents:* 325.

*Frequency:* On occasion.

*Total Responses:* 9,000.

*Average Time per Response:* 12 minutes.

*Estimated Total Burden Hours:* 1,800.

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintenance):* \$3.

#### Economic Survey Schedule

##### I. Background

Sections 5, 6(a)(3) and 8 of the Fair Labor Standards Act (FLSA), administered by the Wage and Hour Division, provide that covered, nonexempt employees in American Samoa may be paid a minimum wage rate established by a special industry committee. The committee is to recommend to the Secretary of Labor the highest minimum wage rate (not to exceed the rate required under section 6(a)(1) of the FLSA) that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in American Samoa a competitive advantage over any other industry in the United States outside of American Samoa. The Secretary of Labor must submit to the industry committee economic data to enable the committee to recommend the industry wage rates. The Economic Survey Schedule (WH-1) is a voluntary use form completed by employers in American Samoa to disclose certain economic data concerning their establishment.

##### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to gather information necessary to prepare the required economic report to be used by the committee to set industry wage rates in American Samoa.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Economic Survey Schedule.

*OMB Number:* 1215-0028.

*Agency Number:* WH-1.

*Affected Public:* Business or other for-profit; State, Local or Tribal Government.

*Total Respondents:* 50.

*Frequency:* Biennially.

*Total Responses:* 50.

*Average Time per Response:* 45 minutes.

*Estimated Total Burden Hours:* 38.

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintenance):* \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 7, 2000.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 00-9339 Filed 4-13-00; 8:45 am]

BILLING CODE 4510-27-P

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by

the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1 appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued

Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

#### Withdrawn General Wage Determination Decision

This is to advise all interest parties that the Department of Labor is withdrawing, from the date of this notice, the following General wage Determinations:

OH000005—See OH000004

OH000006—See OH000004

OH000009—See OH000004

OH000021—See OH000004

OH000022—See OH000004

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effected unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

#### New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

##### Volume III

North Carolina:

NC000055 (Apr. 14, 2000)

#### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

##### Volume I

None

*Volume II*

## Pennsylvania:

PA000004 (Feb. 11, 2000)  
 PA000032 (Feb. 11, 2000)  
 PA000033 (Feb. 11, 2000)  
 PA000038 (Feb. 11, 2000)  
 PA000042 (Feb. 11, 2000)  
 PA000065 (Feb. 11, 2000)

*Volume III*

## North Carolina:

NC000004 (Feb. 11, 2000)

*Volume IV*

## Illinois:

IL000001 (Feb. 11, 2000)  
 IL000002 (Feb. 11, 2000)  
 IL000007 (Feb. 11, 2000)  
 IL000016 (Feb. 11, 2000)  
 IL000017 (Feb. 11, 2000)  
 IL000018 (Feb. 11, 2000)  
 IL000029 (Feb. 11, 2000)  
 IL000030 (Feb. 11, 2000)  
 IL000035 (Feb. 11, 2000)  
 IL000042 (Feb. 11, 2000)  
 IL000043 (Feb. 11, 2000)  
 IL000049 (Feb. 11, 2000)  
 IL000052 (Feb. 11, 2000)  
 IL000054 (Feb. 11, 2000)  
 IL000057 (Feb. 11, 2000)  
 IL000061 (Feb. 11, 2000)  
 IL000069 (Feb. 11, 2000)

## Ohio:

OH000002 (Feb. 11, 2000)  
 OH000004 (Feb. 11, 2000)  
 OH000013 (Feb. 11, 2000)  
 OH000029 (Feb. 11, 2000)

*Volume V*

## Iowa:

IA000024 (Feb. 11, 2000)  
 IA000076 (Feb. 11, 2000)

## Kansas:

KS000008 (Feb. 11, 2000)  
 KS000009 (Feb. 11, 2000)  
 KS000012 (Feb. 11, 2000)  
 KS000016 (Feb. 11, 2000)  
 KS000022 (Feb. 11, 2000)  
 KS000025 (Feb. 11, 2000)  
 KS000029 (Feb. 11, 2000)  
 KS000069 (Feb. 11, 2000)  
 KS000070 (Feb. 11, 2000)

*Volume VI*

## Alaska:

AK000001 (Feb. 11, 2000)  
 AK000002 (Feb. 11, 2000)  
 AK000003 (Feb. 11, 2000)  
 AK000006 (Feb. 11, 2000)

## Colorado:

CO000001 (Feb. 11, 2000)  
 CO000005 (Feb. 11, 2000)

## Washington:

WA000002 (Feb. 11, 2000)

## Wyoming:

WY000005 (Feb. 11, 2000)  
 WY000006 (Feb. 11, 2000)  
 WY000007 (Feb. 11, 2000)

*Volume VII*

## California:

CA000001 (Feb. 11, 2000)  
 CA000002 (Feb. 11, 2000)  
 CA000009 (Feb. 11, 2000)  
 CA000028 (Feb. 11, 2000)  
 CA000030 (Feb. 11, 2000)

CA000031 (Feb. 11, 2000)  
 CA000032 (Feb. 11, 2000)  
 CA000033 (Feb. 11, 2000)  
 CA000035 (Feb. 11, 2000)  
 CA000036 (Feb. 11, 2000)  
 CA000037 (Feb. 11, 2000)  
 CA000038 (Feb. 11, 2000)  
 CA000039 (Feb. 11, 2000)  
 CA000040 (Feb. 11, 2000)  
 CA000041 (Feb. 11, 2000)

## Nevada:

NV000003 (Feb. 11, 2000)  
 NV000009 (Feb. 11, 2000)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC This 6 Day of April 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00-9056 Filed 4-13-00; 8:45 am]

**BILLING CODE 4510-27-M**

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****Working Group on Benefit Continuity After a Business Transaction; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting**

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, May 9, 2000, of the Advisory Council on Employee Welfare and Pension Benefit Plans newly-established Working Group on Benefit Continuity After a Business Transaction.

The session will take place in Room N-5437 A-D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for working group members to set its agenda for 1999 and begin taking testimony on the subject. Names as chair to head the group is Rebecca Miller from Rochester, Minn., Partner with McGladrey & Pullen LLP, and vice chair is Janie Greenwood Harris, from St. Louis, Mo., Trust Counsel for the FIRSTAR Corporation, Inc.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 7th day of April 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00-9340 Filed 4-13-00; 8:45 am]

BILLING CODE 4510-29-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

#### Working Group on Long Term Care: Issues and Solutions; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained on section 512 of the Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Monday, May 8 2000, of the Advisory Council on Employee Welfare and Pension Benefit Plans newly-established working group to study long Term Care: Issues and Solutions.

The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m. in Room N-5437 A-D, U.S. Department of Labor Building, Second and Constitution Avenue NW., Washington, DC 20210, is for working group members to set their agenda for 2000 and to begin taking testimony on the topic. Named to chair the committee is Michael Stapley of Salt Lake City, Utah, President and CEO of Desert Mutual Benefit Association and vice chair is Patrick McTeague of Topsham, Maine, Partner, of McTeague, Higbee, MacAdam, Case, Watson and Cohen.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organization wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statement should be set to the Executive Secretary of the Advisory

Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 7th day of April 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00-9341 Filed 4-13-00; 8:45 am]

BILLING CODE 4510-29-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

#### Working Group on the Benefit Implications of Phased Retirement; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group recently established by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the Benefit Implications of Phased Retirement will hold an open public meeting on Monday, May 8, 2000, in Room N-5437 A-D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to organize the agenda for the 2000 working group and to begin taking testimony on the topic. Named as the chair is Carl Camden from Troy, Mich., Executive Vice President of Field Operations, Sales and Marketing, Kelly Services, Inc., and vice chair is Richard Tani from Mt. Prospect, Ill., retired from William M. Mercer.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon

Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 7th day of April, 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00-9342 Filed 4-13-00; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-036)]

### Agency Information Collection: Submission for OMB Review, Comment Request

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this proposal should be received on or before May 14, 2000.

**ADDRESSES:** All comments should be addressed to Mr. Paul A. Boellner Code Q, National Aeronautics and Space Administration, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358-1223.

*Reports:* None.

*Title:* NASA Safety Reporting System.  
*OMB Number:* 2700-0063.

*Type of Review:* Extension.

*Need and Uses:* NASA employees and contractors can voluntarily and confidentially report to an independent agent, any safety concerns or hazards pertaining to any NASA program or project, which have not been resolved through the normal process.

*Affected Public:* Federal government.

*Estimated Number of Respondents:* 75.

*Responses Per Respondent:* 1.

*Estimated Annual Responses:* 75.

*Estimated Hours Per Request:* ¼ hr.

*Estimated Annual Burden Hours:* 19 hrs.

*Frequency of Report:* As needed.

**David B. Nelson,**

*Deputy Chief Information Officer, Office of the Administrator.*

[FR Doc. 00-9263 Filed 4-13-00; 8:45 am]

BILLING CODE 7510-01-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00-033]

### NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

**DATES:** Wednesday, May 3, 2000, 8 a.m. to 5 p.m.

**ADDRESSES:** National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC-5A, Room 5H46, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sam L. Pool, Code SA, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 281-483-7109.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Chairman's Perspective
- Status of Findings and Recommendations
- Space Medicine Overview and Budget Status
- Current Issues in Space Medicine Issues
- Multilateral Medical Operations Panel Report
- Multilateral Space Medicine Board Report
- Physician Comparability
- NeuroLab Update
- OLMSA Policy on Astronaut Health Care & Biomedical Research
- Pillars of Biology & Augmentation Update

- Progress, Institute of Medicine Review
- Occupational Health Update
- Preparation and Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 10, 2000.

**Matthew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00-9260 Filed 4-13-00; 8:45 am]

BILLING CODE 7510-01-U

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00-034]

### NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Airframe Systems Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Airframe Systems Subcommittee.

**DATES:** Thursday, May 4, 2000, 8 a.m. to 5:30 p.m. and Friday, May 5, 2000, 8 a.m. to 12 Noon.

**ADDRESSES:** National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23681-0001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Darrel Tenney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 757/864-6033.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Discussions on Strategic Directions in New Code R & Impacts to Aerospace Vehicle Systems Technology Program
- Breakthrough Technologies—Scope and Direction
- Transportation System Architecture

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 10, 2000.

**Matthew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00-9261 Filed 4-14-00; 8:45 am]

BILLING CODE 7510-01-U

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-035)]

### NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

**DATES:** Monday, May 8, 2000, 9:00 a.m. to 5:45 p.m.; and Tuesday, May 9, 2000, 8 a.m. to 4:15 p.m.

**ADDRESSES:** Endicott House, 80 Haven Street, Dedham, MA 02026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1876.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

*May 8*

- Assessment of the State-of-the-Enterprise
- Budget Discussion
- Status Reports re: ESSAAC Subcommittees and ad hoc Panels
- Technology
- Data & Information Systems
- Future Goals & GPRA Metrics
- Applications Program Overview
- Overview of the ESE Science Implementation Plan
- New Overview Section
- Research Solicitation Strategy
- Open Discussion
- Adjourn

*May 9*

- Summary of First Day
- Technology Strategy and Roadmap
- Strategic Planning Status Overview—ESE Vision
- ESSAAC Discussion
- Debriefing/Closing Remarks
- Summary of Actions, Future Schedule

## —Adjourn

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 10, 2000.

**Matthew M. Crouch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 00-9262 Filed 4-13-00; 8:45 am]

BILLING CODE 7510-01-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99-04 to obtain separate disposition authority for the electronic

copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

**DATES:** Requests for copies must be received in writing on or before May 30, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99-04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge \$.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:**

Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301)713-7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99-04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000-02, which suspended Bulletin 99-04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99-04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99-04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99-04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99-04. Alternatively, agencies

may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

#### Schedules Pending

1. Social Security Administration, Agency-wide (N9-47-00-28, 7 items, 7 temporary items). Electronic copies of records created using electronic mail and word processing that relate to communications. Included are electronic copies of such documents as published issuances and related production and control files, records relating to audiovisual products, graphics reference files, and talent files. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Record keeping copies of these files are included in Disposition Job Nos. NC174-176, NC-47-75-9, NC-47-75-24, NC1-47-76-12, NC1-47-76-14, and NC1-47-81-5.

2. Occupational Safety and Health Review Commission, Office of the Executive Director (N9-455-00-1, 14 items, 14 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Public Information Office. Included are electronic copies of such documents as subject files, speeches and articles, activity reports, congressional testimony, publications, and

administrative studies. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job No. N1-455-87-1.

3. United States International Trade Commission, Agency-wide (N9-81-00-1, 14 items, 14 temporary items). Electronic copies of records created using electronic mail and word processing. Included are electronic copies of such documents as publications, press releases, minutes of meetings, litigation case files, informal investigation files, congressional correspondence, directives, budget estimates, and files pertaining to commodities. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. NC1-81-78-1, N1-81-89-1, and N1-81-97-1.

Dated: April 7, 2000.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—  
Washington, DC.*

[FR Doc. 00-9299 Filed 4-13-00; 8:45 am]

**BILLING CODE 7515-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327 and 50-328]

### Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

#### Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10, Code of Federal Regulations (10 CFR), Section 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K, for Facility Operating Licenses Nos. DPR-77 and DPR-79, issued to the Tennessee Valley Authority (TVA) for operation of the Sequoyah Nuclear Plant (SQN) Units 1 and 2, located in Hamilton County, Tennessee.

#### Environmental Assessment

##### Identification of the Proposed Action

The proposed action is in accordance with TVA's application for exemptions dated February 11, 2000.

The proposed action is to exempt TVA from requirements to base its analyses of hydrogen generation, energy release and cladding oxidation, during design basis accidents, on the assumption that either zircaloy or

ZIRLO is used as the fuel rod cladding material. The design of a new fuel planned for use at SQN utilizes M5 alloy as the fuel rod clad, spacer grid, fuel assembly guide, instrument tube and fuel rod end plug material.

##### The Need for the Proposed Action

The proposed exemption is needed because the regulations indicate that light-water reactors contain fuel of uranium oxide pellets enclosed in zircaloy or ZIRLO cladding. The licensee proposes to use a new fuel having "M5" cladding instead of zircaloy or ZIRLO. Exemptions are, therefore, required in order to use the new fuel.

One specific regulation that references use of zircaloy and ZIRLO as fuel cladding material is 10 CFR 50.46, which defines the analytical requirements related to the performance of Emergency Core Cooling Systems (ECCS). TVA has provided information that indicates that the effectiveness of ECCS will not be affected by the use of M5 material, and that the ECCS acceptance criteria specified in the regulations for use with zircaloy and ZIRLO are also applicable to M5. Because the underlying purpose of 10 CFR 50.46 is achieved through the use of M5, special circumstances are present under 10 CFR 50.12(a)(2)(ii) for granting an exemption to 10 CFR 50.46.

The other regulations that relate to use of zircaloy and ZIRLO are 10 CFR 50.44 and 10 CFR 50, Appendix K, which ensure that cladding oxidation and hydrogen generation are limited during a loss-of-coolant accident and conservatively accounted for in analytical models. TVA has provided information indicating that the "Baker-Just equation," referenced in these regulations for use with zircaloy and ZIRLO, are also conservative for use with M5. Because the underlying purpose of 10 CFR 50.44 and 10 CFR 50, Appendix K, is achieved through the use of M5, special circumstances are present under 10 CFR 50.12(a)(2)(ii) for granting an exemption to these regulations.

##### Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with regard to radiological impacts to the general public, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be

released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternative to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no action" alternative). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated February 13, 1974, for SQN Units 1 and 2.

*Agencies and Persons Consulted*

In accordance with its stated policy, the NRC staff consulted with an official of the State of Tennessee, Ms. Joelle Key, on March 29, 2000, regarding the environmental impact of the proposed action. Ms. Key had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's letter dated February 11, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room) and from the Agencywide Documents Access and Management System.

Dated at Rockville, Maryland, this 10th day of April 2000.

For The Nuclear Regulatory Commission.

**Ronald W. Hernan,**

*Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-9298 Filed 4-13-00; 8:45 am]

**BILLING CODE 7590-01-P**

**PENSION BENEFIT GUARANTY CORPORATION**

**Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (<http://www.pbgc.gov>).

**DATES:** The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in April 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 2000. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 2000.

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

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in April 2000 is 5.14 percent (i.e., 85 percent of the 6.05 percent yield figure for March 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 1999 and April 2000.

For premium payment years beginning in:	The assumed interest rate is:
May 1999 .....	4.72
June 1999 .....	4.94
July 1999 .....	5.13
August 1999 .....	5.08
September 1999 .....	5.16
October 1999 .....	5.16
November 1999 .....	5.32
December 1999 .....	5.23
January 2000 .....	5.40
February 2000 .....	5.64
March 2000 .....	5.30
April 2000 .....	5.14

**Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability**

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of

2000, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
10/1/92 .....	6/30/94	7
7/1/94 .....	9/30/94	8
10/1/94 .....	3/31/95	9
4/1/95 .....	6/30/95	10
7/1/95 .....	3/31/96	9
4/1/96 .....	6/30/96	8
7/1/96 .....	3/31/98	9
4/1/98 .....	12/31/98	8
1/1/99 .....	3/31/99	7
4/1/99 .....	3/31/00	8
4/1/00 .....	6/30/00	9

**Underpayments and Overpayments of Multiemployer Withdrawal Liability**

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the second quarter (April through June) of 2000 (i.e., the rate reported for March 15, 2000) is 8.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest Rate (percent)
10/1/92 .....	6/30/94	6.00
7/1/94 .....	9/30/94	7.25
10/1/94 .....	12/31/94	7.75
1/1/95 .....	3/31/95	8.50
4/1/95 .....	9/30/95	9.00
10/1/95 .....	3/31/96	8.75
4/1/96 .....	6/30/97	8.25
7/1/97 .....	12/31/98	8.50
1/1/99 .....	9/30/99	7.75
10/1/99 .....	12/31/99	8.25
1/1/00 .....	3/31/00	8.50
4/1/00 .....	6/30/00	8.75

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of April 2000.

**John Seal,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00-9293 Filed 4-13-00; 8:45 am]

**BILLING CODE 7708-01-P**

**POSTAL SERVICE**

**Postage Evidencing Product Submission Procedures**

**AGENCY:** Postal Service.

**ACTION:** Notice of proposed procedure; response to comments; extension of time for comments.

**SUMMARY:** "Postage Evidencing Product Submission Procedures," as published in the **Federal Register** on August 17, 1999, was a notification of proposed product submission procedures for all postage evidencing products, including those in the Information Based Indicia Program (IBIP). In response to the solicitation of public comments, two submissions were received. These comments were considered in making the changes incorporated in this revised version, as noted in the discussion of comments, below. In addition to these changes, this version includes new policy on the relationship between the Postal Service and the Provider regarding intellectual property issues.

The USPS, in a cooperative effort with Product Providers and other interested parties, is allowing 30 days for submission of any additional comments to ensure all issues are considered prior to publication of the final rule.

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

**ADDRESSES:** Written comments should be mailed or delivered to the Manager, Postage Technology Management, Room 8430, 475 L'Enfant Plaza SW, Washington DC 20260-2444. Copies of all written comments will be available

at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Nicholas S. Stankosky, (202) 268-5311.

**SUPPLEMENTARY INFORMATION:** With the expansion of postage application methods and technologies, it is essential that product submission procedures for all postage evidencing products be clearly stated and defined. The Postal Service evaluation process can be effective and efficient if these procedures are followed explicitly by all suppliers. In this way, secure and convenient technology will be made available to the mailing public with minimal delay and with the complete assurance that all Postal Service technical, quality, and security requirements have been met. These procedures apply to all proposed postage evidencing products and systems, whether the Provider is new or is currently authorized by the Postal Service.

Title 39, Code of Federal Regulations (CFR) Section 501.9, Security Testing, states, "the Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution." For products meeting the performance criteria for postage evidencing under the Information Based Indicia Program (IBIP), including PC Postage products, the equivalent section is 39 CFR Section 502.10, Security Testing, published as a proposed rule in the **Federal Register**, September 2, 1998. When the Postal Service elects to retest a previously approved product, the Provider will be required to resubmit the product for evaluation according to part or all of the proposed procedures. Full or partial compliance with the procedures will be determined by the Postal Service prior to resubmission by the Provider. The proposed submission procedures will be referenced in 39 CFR parts 501 and 502 but will be published as a separate document titled "Postage Technology Management, Postage Evidencing Product Submission Procedures."

**Discussion of Comments**

*A. Scope of Review*

1. One commenter expressed concern that the scope of Postal Service review of any postage evidencing device should be limited to the boundaries of the logical security device and to the infrastructures and interfaces through which the Postal Service verifies that payment for postage has been received.

The Postal Service does not accept the commenter's view that the review of any postage evidencing device should be limited to the boundaries of the logical security device and to the infrastructures and interfaces through which the Postal Service verifies that payment for postage has been received. The Postal Service is concerned with other potentially security-related aspects of postage evidencing systems beyond those associated with the logical security device and postage payment, such as communications and other administrative functions. The Postal Service must also verify that all aspects of the postage evidencing system submitted for evaluation work together as specified. No revision of the procedures was made as a result of this comment.

2. One commenter had a concern with providing any copies of product software to the Postal Service, as well as with the number of copies required and the stated intent of the Postal Service to keep copies of the software.

The Postal Service agrees in part with the commenter. The requirement was changed so that the Postal Service will require only one copy of the software code, as opposed to the five copies previously requested.

However, the Postal Service does not agree with the commenter that software should be provided only to the National Institute of Standards and Technology (NIST) laboratory, and not to the Postal Service. A copy of the source code is required by the Postal Service because the Postal Service tests many other aspects of the product beyond the security and other features tested by the NIST laboratories. Should the Postal Service have any question about the completeness of a NIST laboratory report, it may require the source code for comparison purposes. Also, for audit and control purposes there is a need for the Postal Service to have on file a full copy of the source code of the most current version of the software for all approved products. This requirement remains unchanged.

3. One commenter had a concern about the procedures to be applied to product modifications and suggested these rules should exempt from the approval process any modification to an approved product when the modification does not affect the boundaries of the security device or its operation.

The Postal Service does not accept the commenter's view that only certain changes to an approved product should be submitted for evaluation. The Postal Service wants to see all changes to an approved product in order to verify that

the proposed modification does not affect the boundaries of the security device or its operation, or otherwise affect security. Each proposed change is evaluated to determine the level of testing required to assess the impact of the change under consideration. No revision of the procedures was made as a result of this comment.

4. One commenter was concerned that the procedures seem to allow the Postal Service to change a test plan that has been submitted by the Provider and approved by the Postal Service during the test process, for any reason or for no reason at all. The commenter also stated that retesting should occur if, but only if, there is a known and proven defect within the security boundaries or a known, proven, and commercially viable technology has been developed that would permit breach of the security device under examination.

The Postal Service does not accept the commenter's views on limiting possible changes to an approved test plan. Postal Service findings during the test and evaluation process can result in the need for additional testing, product retesting, or even resubmission of the product.

Similarly, the Postal Service does not accept the commenter's views on putting limitations on the Postal Service's retesting of an approved product. In accordance with current regulations for metering products (CFR Section 501.9, Security Testing) and proposed regulations for IBI products (502.10, Security Testing, as published in the **Federal Register** September 2, 1998), the Postal Service can require retesting at any time. The text of the regulations states that the Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter/IBI system submitted to the Postal Service for approval or previously approved by the Postal Service for manufacture and distribution. No revision of the procedures or the regulations was made as a result of this comment.

#### *B. Communication and Postal Service Response*

1. One commenter requested that the Postal Service establish target dates for its responses at each stage of the product submission and approval process and to commit to responding to Providers' submissions within a reasonable and prompt time frame, with standardized time frames and methodologies for communication.

The Postal Service understands the commenter's concern and does in fact strive to complete each stage of the

product review, test, and evaluation process in a timely manner. However, it is difficult if not impossible for the Postal Service to commit to a set timetable for response, given resource constraints, the unpredictability of product submissions, and the dependence on outside agents. The Product Providers can help the Postal Service to respond in a timely manner by ensuring that product submissions are complete and meet all requirements specified in the product submission procedures. No revision of the procedures was made as a result of this comment.

2. One commenter asked that a formal communication process be established between the Provider and third party laboratories or consultants retained by the Postal Service in order to discuss significant findings impacting the security assessment of the product submission and communicate significant findings in a timely manner.

The Postal Service does not agree with this request. In order to evaluate postage evidencing products, the Postal Service secures the services of various third parties. These third parties are Postal Service resources paid by the Postal Service to complete tasking at Postal Service direction and to provide reports directly to the Postal Service only. We do not wish to have the efforts of these third parties and the costs of their services diverted by the need to communicate with anyone outside the Postal Service. Any communication between the Provider and these third party resources shall be accomplished through discussions with the Manager, Postage Technology Management. No revision of the procedures was made as a result of this comment.

3. One commenter asked that the Postal Service communicate interim test results and bring to the immediate attention of the Provider any circumstance where there is the potential for test failure.

The Postal Service does not agree with this request. Before submission of a product for Postal Service test and evaluation, the Provider should ensure that the product meets all performance criteria and specifications. A product that is not ready for testing and has functional problems delays the Postal Service evaluation of the product. The Postal Service does not have the resources to act as a test laboratory for the Provider, nor is it an appropriate role for the Postal Service. The Submission Procedures were amended to allow for the Postal Service to charge the Provider for the costs associated with additional testing by the Postal Service that is required as the result of

an incomplete or inadequate initial product submission.

### C. Requirements for FIPS 140 Certification

1. One commenter asked for clarification of the Postal Service policy and position on recognition of FIPS 140 certification for both the Postal Security Device (PSD) and the actual application running on the PSD.

The Postal Service requires only that the PSD itself receive the NIST FIPS 140 certification. The FIPS certification of the PSD is independent of the application. Additional (non-FIPS) functions required of the PSD are specified in the USPS Benchmark Test requirements. These functions will be tested in addition to FIPS-140 functions by a NIST-certified laboratory. The Postal Service has revised the product submission procedures in response to this comment.

### D. Requirements for Use of AMS CD-ROM

1. One commenter questioned the requirement to use and integrate the USPS Address Matching System (AMS) CD-ROM with some IBI systems, claiming that this program does not support all the functionality required, such as coding of addresses to the delivery point and validation of exact input addresses.

The Postage Evidencing Product Submission Procedures that are the subject of this **Federal Register** notice require the Provider to meet Postal Service performance criteria for specific postage evidencing products, as applicable. Any comments on the details of the performance criteria for individual products should be addressed separately to the Manager, Postage Technology Management.

#### 1. Product Submission Procedures

In submitting any postage-evidencing product for Postal Service evaluation, the proposed Provider must provide detailed documentation and comply with requirements in the following areas:

- (1) Letter of Intent.
- (2) Nondisclosure Agreements.
- (3) Concept of Operations (CONOPS).
- (4) Software and Documentation Requirements.
- (5) Provider Infrastructure Plan.
- (6) USPS Address Matching System (AMS) CD-ROM Integration.
- (7) Product Submission/Testing.
- (8) Provider Infrastructure Testing.
- (9) Field Test (Beta) Approval (Limited Distribution).
- (10) Provider/Product Approval (Full Distribution).

The Provider shall indicate the specific requirement(s) addressed by each document submitted in compliance with these Postage Evidencing Product Submission Procedures. The Postal Service requests that the documentation include a matrix showing where each specific requirement is addressed. Documentation shall be in English and formatted for standard letter-size (8.5" × 11") paper, except for engineering drawings, which shall be folded to the required size. Where appropriate, documentation shall be marked as "Confidential." The steps in the Postage Evidencing Product Submission Procedures must be completed in sequential order, except as detailed below.

#### 1.1. Letter of Intent

The Provider must submit a Letter of Intent to the Manager, Postage Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260-2444.

A. The Letter of Intent must include:

- (1) Date of correspondence.
- (2) Name and address of all parties involved in the proposal. In addition to the Provider, the parties listed shall include those responsible for assembly, distribution, management of the product/device, hardware/firmware/software development, testing, and other organizations involved (or expected to be involved) with the product, including suppliers of significant product components. In these procedures, the term "product" is used when referring generically to processes and so forth. However, the term "product" includes "product/device."
- (3) Name and phone number of official point of contact for each company identified.
- (4) Provider's business qualifications (*i.e.*, proof of financial viability, certifications and representations, proof of ability to be responsive and responsible).
- (5) Product/device concept narrative.
- (6) Provider infrastructure concept narrative.
- (7) Narrative that identifies the internal resources knowledgeable of current Postal Service policies, procedures, performance criteria, and technical specifications to be used to develop security, audit, and control features of the proposed product.
- (8) The target Postal Service market segment the proposed product is envisioned to serve.

B. The Provider must submit with the Letter of Intent a proposed product

development plan of actions and milestones (POA&M) with a start date coinciding with the date of the Letter of Intent. Reasonable progress must be shown against these stated milestones.

C. The Manager, Postage Technology Management, will acknowledge in writing the receipt of the Provider's Letter of Intent and will designate a Postal Service point-of-contact. Upon receipt of this acknowledgment, the Provider may continue with the sequential requirements of the product submission process.

#### 1.2. Nondisclosure Agreements

These agreements are intended to ensure confidentiality and fairness in business. The Postal Service is not obligated to provide product submission status to any parties not identified in the Letter of Intent. After obtaining signed nondisclosure agreements, the Provider may continue with the sequential requirements of the product submission process.

#### 1.3. Concept of Operations

A. The Provider must submit a Concept of Operations (CONOPS) that discusses at a moderate level of detail the features and usage conditions for the proposed product. The Provider should submit 10 serialized printed copies and one electronic copy on a PC-formatted 3.5" floppy disk. Additionally, the Provider must submit a detailed process model supporting each CONOPS section.

B. At a minimum, the CONOPS should cover the following areas:

- (1) System Overview.
  - (a) Concept overview/business model.
  - (b) Concept of production/maintenance administration.
  - (c) For Information Based Indicia (IBI) systems, including PC Postage products, the system design overview, including:
    - (i) Postal Security Device (PSD) implementation (stand-alone, LAN, WAN, hybrid).
    - (ii) Features.
    - (iii) Components, including the digital signature algorithm.
    - (d) Product life cycle overview.
    - (e) Adherence to industry standards, such as Federal Information Processing Standard (FIPS) 140-1, as required by the Postal Service.
- (2) System Design Details (for proposed IBI systems, including PC Postage products).
  - (a) PSD features and functions.
  - (b) Host system features and functions.

(c) Other components required for system use including, but not limited to, the proposed indicia design and label stock.

- (3) Product Life Cycle.
  - (a) Manufacturer.
  - (b) Postal Service certification of product/device.
  - (c) Production.
  - (d) Distribution.
  - (e) Product/device licensing and registration.
  - (f) Initialization.
  - (g) Product authorization and installation.
  - (h) Postage Value Download (PVD) process.
    - (i) Product and support system audits.
    - (j) Inspections.
    - (k) Product withdrawal/replacement.
- (i) Overall process.
- (ii) Product failure/malfunction procedures.
  - (1) Scrapped product process.
  - (4) Finance Overview.
    - (a) Customer account management.
      - (i) Payment methods.
      - (ii) Statement of account.
      - (iii) Refund.
    - (b) Individual product finance account management.
      - (i) Postage Value Download (PVD).
      - (ii) Refund.
    - (c) Daily account reconciliation.
      - (i) Provider reconciliation.
      - (ii) Postal Service detailed transaction reporting.
    - (d) Periodic summaries.
      - (i) Monthly reconciliation.
      - (ii) Other reporting, as required by the Postal Service.
    - (5) Interfaces.
      - (a) Communications and message interfaces with Postal Service infrastructure, including but not limited to:
        - (i) PVDs.
        - (ii) Refunds.
        - (iii) Inspections.
        - (iv) Product audits.
        - (v) Lost or stolen product procedures.
      - (b) Communications and message interfaces with applicable Postal Service financial functions, including but not limited to:
        - (i) Postage settings, including those done remotely.
        - (ii) Daily account reconciliation.
        - (iii) Refunds.
      - (c) Communication and message interfaces with Customer Infrastructure, including but not limited to:
        - (i) Cryptographic key management.
        - (ii) Product audits (device and host system).
        - (iii) Inspections.
        - (d) Message error detection and handling.
    - (6) Technical Support and Customer Service.
      - (a) User training and support.
      - (b) Software Configuration Management (CM) and update procedures.

- (c) Hardware/firmware CM and update procedures.
- (7) Other.
  - (a) Change control procedures.
  - (b) Postal rate change procedures.
  - (c) Address Management System ZIP+4 CD-ROM updates, if applicable.
  - (d) Physical security.
  - (e) Personnel/site security.
- C. Supplementary requirements, CONOPS:
  - (1) The CONOPS must be accompanied by substantiated market analysis supporting the target Postal Service market segment that the proposed product is envisioned to serve, as identified in the Letter of Intent.
  - (2) The CONOPS must include a list and a detailed explanation of any proposed deviations from Postal Service performance criteria or specifications. Any proposed deviation to audit and control functions required by current Postal Service policy, procedure, performance criteria, or specification must be accompanied by an independent assessment by a nationally recognized, independent, certified public accounting firm attesting to the proposed auditing method. The report of this information is to be signed by an officer of the accounting firm.
- D. Postal Service response:
  - (1) The Postal Service will respond in a timely manner.
  - (2) For each submission, the Postal Service will appoint a Product Review Control Officer. All communications between the Provider and the Postal Service are to be coordinated through the Product Review Control Officer.
  - (3) The Postal Service will acknowledge, in writing, receipt of the CONOPS and perform an initial review. The Postal Service will provide the Provider with a written summary of the CONOPS review. In the written review, the Postal Service will provide authorization to continue with the product submission process, or a listing of CONOPS requirements that are not met.
  - (4) If, in the sole opinion of the Postal Service, it is determined that significant CONOPS deficiencies do exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the CONOPS to the Provider without further review. It will then be incumbent on the Provider to resubmit a corrected CONOPS.
  - (5) The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

#### 1.4. Software and Documentation Requirements

A. The Provider must submit to the Postal Service one copy of executable code and one copy of source code for all software included in the product.

B. The Provider must submit a detailed design document of the product. For IBI products, this shall include the proposed IBIP indicia design, which must be approved by the Manager, Postage Technology Management.

C. Additionally, depending on the product, the Postal Service requires design documentation that includes, but is not limited to, the following:

- (1) Operations manuals for product usage.
- (2) Interface description documents for all proposed communications interfaces.
- (3) Maintenance manuals.
- (4) Schematics.
- (5) Product initialization procedures.
- (6) Finite state machine models/diagrams.
- (7) Block diagrams.
- (8) Security features descriptions.
- (9) Cryptographic operations descriptions. Detailed references for much of this documentation are listed in FIPS 140-1, Appendix A. The Postal Service will determine the number of copies needed of the aforementioned documentation based on the CONOPS review. The Postal Service will notify the Provider of the required number of copies. The required number of copies are to be uniquely numbered for control purposes.

D. The Provider must submit a comprehensive test plan that will validate that the product meets all Postal Service requirements and, where appropriate, the requirements of FIPS 140-1. With respect to the Provider's Internet server, the test plan shall indicate how the Provider will test to ensure the physical security of the Provider's server and administrative site and the firewall, and to ensure the security of the processes for remote administrative access and configuration control. With respect to the process for initializing customer accounts, the test plan shall describe the tests for ensuring secure distribution or transmission of software and cryptographic keys. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes for all special test equipment and nonstandard or noncommercial instrumentation.

Finally, this test plan must include a proposed schedule of major test milestones.

E. The Provider must submit a benchmark assessment plan. The Manager, Postage Technology Management will provide reference standards, performance criteria, specifications, and so forth to be used as a basis for the Provider to produce this plan.

F. Postal Service response:

(1) The Postal Service will provide its response in a timely manner.

(2) The Postal Service will acknowledge, in writing, receipt of the Provider's design and test plans and will perform an initial review. The Postal Service will furnish the Provider with a written summary of the design plan and test plan reviews. In the written review, the Postal Service will provide authorization to continue with the product submission process, or will provide a listing of design plan requirements or test plan requirements that are not met, and perhaps other deficiencies.

(3) If, in the sole opinion of the Postal Service, it is determined that significant design plan or test plan deficiencies do exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the plans to the Provider without further review. It will then be incumbent on the Provider to resubmit revised plans that address the identified deficiencies.

(4) The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

#### 1.5. Provider Infrastructure Plan

A. The Provider Infrastructure Plan may be submitted concurrently with the design and test plans described in 1.5, Software and Documentation Requirements. At this point in the product submission process, the Postal Service will provide additional performance criteria and specifications for the IBIP public key infrastructure, if required for the product/device, for use as a basis for the applicable elements of the Provider's Infrastructure Plan.

B. The Provider must submit a Provider Infrastructure Plan that describes how the processes and procedures described in the CONOPS will be met or enforced. This includes, but is not limited to, a detailed description of all Provider-related and Postal Service-related operations, computer systems, and interfaces with both customers and the Postal Service that the Provider shall use in manufacturing, producing, distributing, customer support, product/device life

cycle, inventory control, print readability quality assurance, and reporting.

C. Postal Service response:

(1) The Postal Service will respond in a timely manner.

(2) The Postal Service will acknowledge in writing the receipt of the Provider's Infrastructure Plan and will perform an initial review. The Postal Service will provide the Provider with a written summary of the Infrastructure Plan review. In the written review, the Postal Service will provide authorization to continue with the product submission process, or a listing of the Infrastructure Plan requirements that are not met, and perhaps other deficiencies.

(3) If, in the sole opinion of the Postal Service, it is determined that significant Provider Infrastructure Plan deficiencies do exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the Infrastructure Plan to the Provider without further review. It will then be incumbent on the Provider to resubmit a revised Infrastructure Plan to address the identified deficiencies.

(4) The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

#### 1.6. USPS Address Matching System (AMS) CD-ROM Integration

A. The USPS AMS CD-ROM is a required component of IBIP open systems. For such systems, the Provider shall initiate and fully comply with a license agreement with the USPS National Customer Support Center (NCSC). This signed agreement shall describe responsibilities of the AMS CD-ROM supply chain process, including roles of the Provider. The only functionality of the AMS CD-ROM available through an IBIP system shall be address matching and ZIP+4 coding of input addresses.

B. The Provider shall submit a detailed description of how the USPS AMS CD-ROM will be integrated in the product, including a description of the process by which an address is ZIP+4 coded, including all possible optional and required parameters. The Provider can submit this information concurrent with submission of the Software and Documentation Requirements and/or Provider Infrastructure Plan described above.

C. Any CONOPS or products proposed for which the Provider requests a variance to the AMS CD-ROM requirements must be approved by the Manager, Postage Technology

Management prior to proceeding with the next step in the submission process.

#### 1.7. Product Submission/Testing

A. The product/device Provider must be prepared to submit up to five complete production systems of each product/device for which Postal Service evaluation is requested. The required number of submitted systems will be determined by the Postal Service. The Provider must provide any equipment and consumables required to use the submitted product/device in the manner contemplated by the CONOPS.

Thorough Provider testing prior to submission of the product to the Postal Service will avoid unnecessary delays in the review and evaluation process. If, in the opinion of the Postal Service, it is determined that significant product deficiencies exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the product to the Provider without further review. The Provider may resubmit a corrected product.

The Postal Service reserves the right to charge the Provider for the costs associated with any additional testing by the Postal Service that is required as the result of an incomplete or inadequate initial product submission.

B. If the product contains a cryptographic module, the Provider must submit the cryptographic module to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for FIPS 140-1 certification, or equivalent, as authorized by the Postal Service. The Postal Service requires only that the PSD itself receive the NIST FIPS 140-1 certification. The FIPS certification of the PSD is independent of the application.

Upon completion of the FIPS 140-1 certification, or equivalent, the Postal Service requires the following to be forwarded directly from the accredited laboratory to the Manager, Postage Technology Management for review:

(1) A copy of all information given to the laboratory by the Provider, including a summary of all information transmitted orally.

(2) A copy of all instructions from the Provider with respect to what is or is not to be tested for.

(3) A copy of the letter of recommendation for the product as submitted by the laboratory to the National Institute of Standards and Technology (NIST) of the United States of America.

(4) Copies of all proprietary and nonproprietary reports and recommendations generated during the test process.

(5) A copy of the certificate, if any, issued by NIST for the product.

(6) Written full disclosure identifying any contribution of the NVLAP laboratory to the design, development, or ongoing maintenance of the cryptographic module or the product/device.

C. For products with a cryptographic module, non-FIPS functions required of the module are specified in the USPS Benchmark Test requirements. A NIST-certified laboratory will test these functions in addition to testing the FIPS 140-1 functions.

D. If the cryptographic module is submitted to an accredited test laboratory to meet the requirements of paragraph B or C of this section, the laboratory must meet all the requirements specified by NIST in the Implementation Guidance for FIPS PUB 140-1 and the Cryptographic Module Validation Program; NIST document 150-17, Cryptographic Module Testing; and other documents issued by NIST to govern the conduct of accredited laboratories.

E. All cryptographic modules submitted to an accredited laboratory for testing under paragraph B or C of this section shall be retained by the laboratory for 3 years from date of product approval by the Postal Service.

F. The Provider may submit the product to the Postal Service for test and evaluation prior to completion of any required FIPS 140-1 testing, provided a letter is submitted from the NVLAP laboratory to the Postal Service indicating:

(1) That the cryptographic module included in the product is being tested under FIPS 140-1 for the required security levels, in accordance with the current, relevant performance criteria.

(2) That the cryptographic module has a reasonable chance of meeting the FIPS 140-1/USPS security levels.

(3) The timeline for FIPS 140-1 test completion.

G. The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any product submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

H. Upon satisfactory completion of the Postal Service testing and NVLAP laboratory testing (where required), the Postal Service will provide authorization to continue the product submission process. The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

I. The Provider shall obtain, maintain, and comply with the certification

requirements as established by the USPS in the Coding Accuracy Support System (CASS) program. The Provider shall obtain, maintain, and comply with CASS certification requirements prior to product offering.

#### 1.8. Product Infrastructure Testing

A. Prior to approval for distribution of any product/device, the Provider must achieve test and approval of all reporting requirements, including, but not limited to, Postal Service/customer licensing support, product status activity reporting, total product population inventory, irregularity reporting, lost and stolen reporting, financial transaction reporting, account reconciliation, digital certificate acquisition, product initialization, cryptographic key changes, rate table changes, print quality assurance, device authorization, device audit, product audit, and remote inspections.

B. Testing of these activities and functions includes computer-based testing of all interfaces with the Postal Service, including but not limited to the following:

(1) Product manufacture and life cycle (including leased, unleased, new product/device stock, installation, withdrawal, replacement, key management, lost, stolen, and irregularity reporting).

(2) Product distribution and initialization (including product authorization, product initialization, customer authorization, and product maintenance).

(3) Licensing (including license application, license update, and license revocation).

(4) Finance (including cash management, individual product financial accounting, refund management, daily summary reports, daily transaction reporting, and monthly summary reports).

(5) Audits and inspections, including site audits.

C. The Provider must complete a "Product-Provider Infrastructure-Financial Institution-USPS Infrastructure" (Alpha) test involving all entities in the proposed architecture. At a minimum this includes the proposed product, Provider Infrastructure, financial institution, and Postal Service Infrastructure systems and interfaces. Alpha testing is intended to demonstrate the proposed product utility and its functionality and compatibility with other systems. Alpha testing may be conducted in a laboratory environment.

D. Provider Infrastructure Testing (Alpha) test note: The Postal Service reserves the right to require or conduct

additional examination and testing at any time, without cause, of any Provider Infrastructure system supporting a postage evidencing product/device approved by the Postal Service for manufacture and distribution. Initial Provider Infrastructure testing and (Alpha) testing schedules will be supported at the convenience of the Postal Service.

E. Demonstrable evidence of successful completion for each test is required prior to proceeding.

F. The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

#### 1.9. Field Test (Beta) Approval (Limited Distribution)

A. The Provider will submit a proposed Field (Beta) Test Plan identifying test parameters, product quantities, geographic location, test participants, test duration, test milestones, and product recall plan. The Beta Test Plan will be in accordance with the Beta Test Strategy in effect for the given product type. The Postal Service will supply the appropriate Beta Test Strategy to the Provider upon request.

The purpose of the Beta test is to demonstrate the proposed product's utility, security, audit and control, functionality, and compatibility with other systems, including mail entry, acceptance, and processing, in a real-world environment. The Beta test will employ available communications and will interface with current operational systems to conduct all product functions. The Manager, Postage Technology Management will determine acceptance of Provider-proposed Beta Test Plans based on, but not limited to, assessed risk of the product, product impact on Postal Service operations, and requirements for Postal Service resources. Proposed candidates for Beta test participation must be approved by the Postal Service. Beta test approval consideration will be based in whole or in part on the location, mail volume, mail characteristics, and mail origination and destination patterns.

B. The Provider has a duty to report security weaknesses to the Postal Service to ensure that each product/device model and every product/device in service protects the Postal Service against loss of revenue at all times. Beta participants must agree to a nondisclosure confidentiality agreement when reporting product security, audit, and control issues, deficiencies, or failures to the Provider and the Postal Service. A grant of Field Test Approval (FTA) does not constitute an irrevocable

determination that the Postal Service is satisfied with the revenue-protection capabilities of the product/device. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Postage Technology Management.

C. The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

#### 1.10. Provider/Product Approval (Full Distribution)

A. Upon receipt of the final certificate of evaluation from the national laboratory, where required, and after obtaining positive results of internal testing of the product/device, successful completion of Provider infrastructure testing, Alpha testing, demonstration of limited distribution activities (Beta testing), and audits of Provider site security, the Postal Service will administratively review the submitted product, the Provider infrastructure, and the Provider qualification requirements for final approval of full distribution. In preparation for the administrative review, the Provider shall update any product submission documentation submitted in compliance with the requirements of the Postage Evidencing Product Submission Procedure that is no longer accurate with respect to the product in review.

**Note:** Required qualifications for Providers of IBI systems can be found in draft 39 CFR part 502, Manufacture, Distribution, and Use of Postal Security Devices and Information-Based Indicia, as published in the **Federal Register** on September 2, 1998. Copies are available by contacting USPS, Postage Technology Management, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260-2444. Copies of CFR part 501 pertaining to manufacturer qualifications regarding postage meters are available also at the above address.

B. The Postal Service may require, at any time, that models/versions of approved products, and the design and user manuals and specifications applicable to such products, and any revisions thereof, be deposited with the Postal Service.

## 2. Change Control Procedure

### 2.1. Overview

A. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager,

Postage Technology Management. The submission of a change proposal and the subsequent test and acceptance of a product change are designed to ensure not only that the changed product meets all requirements and performance criteria but also that the stated changes made to a product do not introduce any unintended, unidentified, unexpected, or undesirable changes to the form, fit, function, or security of the product.

B. Once a postage evidencing product/device has received final approval from the Postal Service, the Provider is required to submit any change(s) to that product for Postal Service approval. Changes covered by this process include, but are not limited to, the following:

- (1) Changes to the form, fit, function, or security of the product/device.
- (2) Changes resulting from new Postal Service regulations, such as an updated postal rate table.
- (3) Changes to the software or firmware.
- (4) Changes to the PSD, for products using such a device.
- (5) Changes to the physical configuration of the product.
- (6) Changes to the indicia design or to consumables, such as labels, that can be used with the product.
- (7) Changes to product documentation or packaging.
- (8) Changes to product distribution methods.
- (9) Changes to third party providers of significant product components.

C. For an IBI product, the changed product shall be in compliance with the IBI performance criteria and all other Postal Service regulations in effect at the time the change is implemented. All changes to previously approved products must be approved by the Postal Service before implementation. The Postal Service must also approve the timetable and procedures for implementing changes.

D. Providers are encouraged to consolidate multiple changes in a single change proposal to enable the Postal Service to expedite review of the changes.

E. The Provider shall fully document all changes, in accordance with the requirements described in the following sections.

### 2.2. Provider Responsibilities

A. The Provider shall be responsible for notifying the Postal Service of any proposed changes made as described in section 2.1. The Provider shall be responsible for having a Postal Service-approved process for configuration management of the versions of each approved product. The Provider's

process shall ensure that no changes can be made without proper tracing of design changes, records of authorization, and notification to the Postal Service. The Provider is responsible for submitting a change proposal in accordance with the requirements of this procedure and for achieving Postal Service approval before implementing any change.

#### B. Detailed Provider Actions

(1) Letter of Intent to Change. The first step in the submission of a change proposal is to submit a Letter of Intent to Change, similar to the Letter of Intent described under Product Submission Procedures, above. The Letter of Intent to Change shall be submitted to the Manager, Postage Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260-2444. The letter must include:

- (a) Date of correspondence.
- (b) Name and address of all parties involved in the change proposal, including those responsible for assembly, distribution, management of the product/device, hardware/firmware/software development or testing, and other organizations involved (or expected to be involved) with the changed product.
- (c) Name and phone number of official point of contact for each party identified above.
- (d) Change concept narrative. A description of the proposed change, identifying any changes to the form, fit, function, or security of the product.
- (e) Discussion of the reasons for the change.

(f) Discussion of the implications of the change for product security, product identification, and Provider procedures such as distribution, operations, or financial transactions, as well as any cost impact and impact on product customers. The document shall also discuss the impact of the change on Postal procedures such as mail entry, mail acceptance, and mail processing, as well as the impact on the interfaces between the Provider and the Postal Service and/or customers.

(g) An outline of the actions the Provider will take in support of the change proposal, including a listing of the documentation the Provider will submit in support of the change and the testing that will be performed to ensure the changes meet Postal Service requirements.

(h) The timetable for submission, test, acceptance, and implementation of the proposed change.

(i) The procedure for implementation of the proposed change.

(2) Additional documentation. Once the Letter of Intent to Change is submitted, the Provider shall review the following documents and submit any changes needed to ensure they are still current. Additional documentation may be required at the discretion of the Postal Service.

- (a) Nondisclosure Agreements.
- (b) Concept of Operations.
- (c) Software and Documentation.
- (d) Provider Infrastructure Plan.
- (e) USPS Address Matching System (AMS) CD-ROM Integration, if required for the product.

(3) Testing. The Provider will test the product changes as described in the Postage Evidencing Product Submission Procedures to the extent required by the proposed change, in accordance with Postal Service direction. The Provider shall document the tests performed on product changes and shall submit this documentation along with verification of successful completion of the testing.

### 2.3. Postal Service Responsibilities

A. The Postal Service will execute its responsibilities in a timely manner.

B. The Postal Service will review the Letter of Intent to Change and accept or reject each component of the Provider's proposed approach for product change, documentation submittal, and testing, and schedule for release.

C. The Postal Service will complete testing of the changes as required to ensure the changes meet Postal Service performance criteria, and provide written comments to the Provider.

Approval of the change will be granted in writing by the Manager, Postage Technology Management.

D. The Postal Service reserves the right to determine if a proposed change is extensive enough to constitute a new product, rather than a change to a previously approved product. If such a determination is made, the Provider shall comply with all requirements of the Postage Evidencing Product Submission Procedures, including field testing.

### 3. Intellectual Property and License Policy

Product Service Providers who choose to produce a postage evidencing product or service must comply with USPS Intellectual Property (IP) Requirements as a condition for receiving and maintaining regulatory approval. If a Product Service Provider is unable or unwilling to meet the IP Requirements, it should not offer the product or service. Product Service Providers do not have authorization or consent from the USPS under 28 U.S.C. 1498(a) or

otherwise to make or use any patented invention.

The USPS reserves the right and authority to discontinue a Product Service Provider's authorization to distribute a postage evidencing device or service if the USPS or a court determines that the manufacture of the device or service, the use of the device or service by mailers, or the validation of the indicia produced by the device or service requires use of patented inventions for which the Product Service Provider has not procured appropriate licenses. This requirement applies to all aspects of the Product Service Provider's product or service, including those required or specified under applicable performance criteria.

### 4. Request for Comment

It is emphasized that the proposed procedures for initial product submission and changes to already approved products are being published for comments and are subject to final definition.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rule making by 39 U.S.C. 410 (a), the Postal Service invites public comments on the proposed procedures.

**Stanley F. Mires,**  
*Chief Counsel, Legislative.*

[FR Doc. 00-9268 Filed 4-13-00; 8:45 am]  
BILLING CODE 7710-12-P

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### PRESIDIO TRUST

#### Presidio Theatre Building 99, The Presidio of San Francisco, California; Notice of Intent To Prepare an Environmental Assessment

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of intent to prepare an Environmental Assessment (EA) for the rehabilitation and expansion of the Presidio Theatre (Building 99) within The Presidio of San Francisco, San Francisco, California (Presidio).

**SUMMARY:** The Presidio Trust has received a proposal from one of its tenants, the San Francisco Film Centre, for rehabilitation and expansion of the Presidio Theatre within the Presidio. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91-90 as amended), The Presidio Trust will prepare an EA for rehabilitating the existing 15,140-square-foot Presidio Theater and adding 45,000 square feet of new construction for theater uses, a restaurant, retail

museum and library store (proposed action). The EA will include brief discussions of the need for the proposal, alternatives including "no action" and reuse of existing buildings to minimize new construction, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. Based on a preliminary review of the proposed action, issues and impact topics to be analyzed include the following: Traffic and transportation systems; cultural resources (effect on national historic landmark district and archeological resources); hydrology and water quality; visual resources and scenic viewing; fire protection; air quality; and noise.

**PUBLIC COMMENT:** The Presidio Trust will hold a public scoping workshop to solicit comment regarding the range of alternatives and the specific impacts to be evaluated in the EA on May 10, 2000, from 6:00 to 9:00 p.m., at the Log Cabin (Presidio Building #1299) in the Presidio. Comments concerning the scope of this project must be received by May 24, 2000. The Presidio Trust will provide other informal information updates and notices concerning this project through postings on its website at [www.presidiotrust.gov](http://www.presidiotrust.gov) or through its monthly publication, the Presidio Post. The Presidio Trust will announce the release of the EA by notice in the **Federal Register** and the Presidio Post, and through a direct mailing to the affected public. The Presidio Trust also anticipates that the GGNRA Advisory Commission will include this project proposal on the agenda of one of its upcoming public meetings, which will be publicly announced when the meeting date is established.

**ADDRESSES:** Written comments concerning this notice must be sent to John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052. Fax: 415-561-5315. E-mail: [jpelka@presidiotrust.gov](mailto:jpelka@presidiotrust.gov).

**FOR FURTHER INFORMATION CONTACT:** John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052. Telephone: 415-561-5300.

Dated: April 7, 2000.

**Karen Cook,**  
*General Counsel.*

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BILLING CODE 4310-4R-U

**SECURITIES AND EXCHANGE  
COMMISSION****[Release No. IC-24387; File No. 812-11910]****The Penn Mutual Life Insurance  
Company, et al.; Notice of Application**

April 11, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").**ACTION:** Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940, as amended (the "1940 Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

*Summary of Application:* Applicants request an order approving the substitutions of shares of four new investment portfolios ("New Funds") of Penn Series Funds, Inc. ("Penn Series") for shares of certain unaffiliated registered management investment companies ("Replaced Funds") currently serving as investment options for certain variable annuity contracts and variable life insurance policies, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutes ("Substitutions").

*Applicants:* The Penn Mutual Life Insurance Company ("Penn Mutual Life"), The Penn Annuity and Insurance Company ("PIA"), Penn Mutual Variable Annuity Account III ("Variable Annuity Account III"), Penn Mutual Variable Life Account I ("Variable Life Account I"), PIA Variable Annuity Account I ("Variable Annuity Account I," and together with Variable Annuity Account III and Variable Life Account I, "the Separate Accounts"), and Independence Capital Management, Inc. ("ICMI") (collectively, "Applicants").

*Filing Date:* The application was filed on December 23, 1999, and amended and restated on April 10, 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 by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on 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 Secretary of the Commission.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants: Franklin L. Best, Esq., Managing Corporate Director, The Penn Mutual Life Insurance Company, 600 Dresher Road, Horsham, PA 19044. Copies to C. Ronald Rubley, Esq., 1701 Market Street, Philadelphia, PA 19103 and Edward J. Meehan, Jr., Esq., 1701 Market Street, Philadelphia, PA 19103.

**FOR FURTHER INFORMATION CONTACT:** Paul G. Cellupica, Senior Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (202-942-8090).

**Applicants' Representations**

1. Penn Mutual Life is a mutual life insurance company organized under the laws of Pennsylvania in 1847. It provides life insurance, annuity, and investment products. PIA, a wholly owned subsidiary of Penn Mutual Life, is a Delaware stock insurance company established in 1994.

2. Variable Annuity Account I, sponsored by PIA, is registered under the 1940 Act as a unit investment trust. Variable Annuity Account I serves as a funding vehicle for variable annuity contracts issued by PIA. Variable Annuity Account III, sponsored by Penn Mutual Life, is a unit investment trust registered under the 1940 Act. Variable Annuity Account III serves as a funding vehicle for variable annuity contracts issued by Penn Mutual Life. Variable Life Account I, sponsored by Penn Mutual Life, is a unit investment trust registered under the 1940 Act. Variable Life Account III serves as a funding vehicle for variable life insurance contracts issued by Penn Mutual Life.

3. Variable Annuity Account I and Variable Annuity Account III serves as the funding vehicle for variable annuity contracts ("VA Contracts") issued by Penn Mutual Life and PIA. Variable Life Account I serves as the funding vehicle for variable universal life contracts ("VUL Contracts") issued by Penn Mutual Life. Each of the VA Contracts and VUL Contracts funded by the Separate Accounts (collectively, "Variable Products") is registered with the Commission under the Securities Act of 1933, as amended, and is offered

exclusively by means of a prospectus which describes the applicable terms and conditions of each such contract. The Separate Accounts are each divided into subaccounts (each a "Subaccount") and each Subaccount invests exclusively in shares of funds of registered management investment companies ("Existing Funds") currently available to the holders of the contracts ("Contractholders").

4. The Existing funds consists of 18 separate investment options, which contain certain investment portfolios issued by Penn Series, Neuberger Berman Advisers Management Trust ("Neuberger & Berman Portfolios"), Variable Insurance Products Fund and Variable Insurance Products Fund II ("Fidelity Portfolios"), American Century Variable Portfolios Inc. ("American Century Portfolio") and Morgan Stanley Dean Witter Universal Funds, Inc. ("Morgan Stanley Portfolio"). Each of the Existing Funds is registered as a management investment company under the 1940 Act. Not all of the Existing Funds are involved in the Substitutions. The application contemplates that the American Century Portfolio, two of the three Neuberger & Berman Portfolios and one of the four Fidelity Portfolios will be replaced by substantially similar funds.

5. Penn Series is registered under the 1940 Act as an open-end investment management series. Currently, Penn Series has nine investment portfolios ("Current Penn Funds"). Shares of the Current Penn Funds are offered only to Penn Mutual Life and PIA (Penn Mutual Life and PIA hereinafter referred to collectively as "Penn Mutual") for the Variable Products.

6. ICMI, a wholly owned subsidiary of Penn Mutual Life, is a registered investment adviser under the Investment Advisers Act of 1940. ICMI provides investment management services to each of the Current Penn Funds.

7. Penn Series is organizing four New Funds. Each of the New Funds will have the same or substantially the same investment objectives and policies of one of the Replaced Funds involved in the Substitutions. Overall investment management services will be provided to each of the newly organized New Funds by ICMI pursuant to an investment advisory agreement between ICMI and Penn Series ("ICMI Advisory Agreement"). Under the ICMI Advisory Agreement, ICMI will be responsible for the management of the business and affairs of each of the New Funds, subject to the supervision of the Board of Directors of Penn Series. ICMI will also

be authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective New Funds, but may, at its own cost and expense, retain sub-advisers ("Sub-Advisers") to provide day-to-day portfolio management to each of the New Funds. For its services under the ICMI Advisory Agreement, ICMI will receive a fee from each of the New Funds. ICMI, in turn, will pay the fees and expenses of any Sub-Adviser retained by ICMI or any of the New Funds. It is currently anticipated that ICMI will employ Sub-Advisers for three of the New Funds and directly manage the assets of the fourth New Fund.

8. Penn Series and ICMI have applied for exemptive relief from Section 15(a) of the 1940 Act ("Manager of Managers Order"). The Manager of Managers Order would permit ICMI, as the investment adviser for the existing series of Penn Series to replace any Sub-

Adviser or to employ a new Sub-Adviser, without submitting such actions for the approval of shareholders of the affected series. Following the Substitutions, Applicants anticipate that each of the New Funds will be entitled to rely on the Manager of Managers Order. As a condition to the application, however, Applicants state that they will take no action in reliance on the Manager of Managers Order with respect to any one of the New Funds unless and until the operation of that Fund in the manner contemplated by the Manager of Managers Order is approved, following the Substitutions, by the holders of a majority of the outstanding shares of that Fund within the meaning of the 1940 Act.

9. The purpose of the Substitutions is to provide Contractholders with improved investment options through enhanced investment performance and reduced expense ratios of investment options available under the Variable Products. The Substitutions are the first

step in establishing a manager of managers structure that will provide Applicants with increased ability to affect the administration and management of the investment options offered through Variable Products. As the investment manager of each of the New Funds, ICMI will be in a position to oversee the operations of the New Funds, including the performance and portfolio management. Applicants represent that the manager of managers structure will give Applicants the means to more directly monitor the overall manner in which investment options available through the Variable Products are managed and administered.

10. Applicants seek relief for four Substitutions. The following table summarizes the proposed Substitutions. The investment objectives of Contractholders with interests in any Subaccount of the Separate Account ("Affected Contractholder") will not be materially affected by the Substitutions.

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	Total Net Assets	Replaced Fund			New Fund		
		Actual Advisory Fees	Contractual Advisory Fee	Actual Expense Ratio	Estimated Advisory Fees	Contractual Advisory Fee	Estimated Expense Ratio
Substitution No. 1	\$ 56,263,781	0.51%	0.55% of the first \$250 million of average net assets, 0.525% of the next \$250 million, 0.50% of the next \$250 million, 0.475% of the next \$250 million, 0.45% of the next \$500 million and 0.425% of average daily net assets in excess of \$1.5 billion.	0.87%	0.55%	0.55% of the first \$250 million of average net assets, 0.525% of the next \$250 million, 0.50% of the next \$250 million, 0.475% of the next \$250 million, 0.45% of the next \$500 million and 0.425% of average daily net assets in excess of \$1.5 billion.	0.86%
Substitution No. 2	\$ 12,834,717	0.25%	0.25% of the first \$500 million, 0.225% of the next \$500 million, 0.20% of the next \$500 million, 0.175% of the next \$500 million and 0.15% of average daily net assets in excess of \$2 billion	0.76%	0.30%	0.30%	0.56%
Substitution No. 3	\$190,005,728	0.24% <sup>(1)</sup>	0.24%	0.28% <sup>(2)</sup>	0.07% <sup>(1)</sup>	0.07%	0.25% <sup>(2)</sup>
Substitution No. 4	\$ 35,611,383	1.00%	1.00% of the first \$500 million, 0.95% of the next \$500 million and 0.90% over \$1 billion	1.00%	0.70%	0.70%	1.00%

<sup>(1)</sup> Advisory Fees are before any expense waiver reductions.

<sup>(2)</sup> Expense Ratio includes fee waivers of 0.06.

11. Applicants represent that the investment objectives of each New Fund will be the same as, or substantially similar to, the investment objectives of the corresponding fund that the New Fund will replace. The investment strategies and policies of the Penn Series Limited Maturity Bond Fund and the Penn Series Index 500 Fund will be substantially the same or substantially similar to the investment strategies and policies of the Neuberger Berman Limited Maturity Bond Portfolio and the Fidelity Investments' Index 500 Portfolio. The investment strategies and policies of the Penn Series Mid Cap Value Fund and the Penn Series Mid Cap Growth Fund may differ from the investment strategies and policies of Neuberger Berman Partners Fund and the American Century Capital Appreciation Portfolio respectively. However, the investment strategies and policies of these New Funds will be

sufficiently similar to their corresponding Replaced Funds so that the Affected Contractholders may continue to seek to achieve their investment objectives in the substituted funds.

12. In Substitution No. 1, ICMI will serve as investment adviser and Neuberger Berman Investment Management Inc. ("Neuberger Berman") will continue day-to-day portfolio management as Sub-Adviser to the New Fund. In Substitutions Nos. 2, 3, and 4, the New Fund will, following the substitutions, be advised by investment advisory organizations different from the organizations that currently manage the Replaced Funds. In Substitution No. 2, ICMI will serve as the investment adviser and investment manager of the New Fund. Applicants believe that given the below average investment performance for the Neuberger Berman Limited Maturity Bond Portfolio, ICMI

will achieve improved investment results for Contractholders. In Substitution No. 3, ICMI will serve as the investment adviser and Wells Capital Management Inc. will serve as Sub-Adviser to the Penn Series Index 500 Fund. As in the case of the Fidelity Investment's Index 500 Portfolio, investments of Penn Series Index 500 Fund are expected to approximate the relative composition of the securities in the S&P 500. In Substitution No. 4, the day-to-day decisions for Penn Series Mid Cap Growth Fund will be the responsibility of Turner Investment Partners, Inc. ("TIP") as Sub-Adviser. Applicants believe that TIP is in a position to achieve improved investment results for Contractholders who currently have contract values allocated to the corresponding Replaced Fund.

13. Immediately following the Substitutions, the expense ratios of the

New Funds will not exceed the expense ratios of the Replaced Funds. The following table shows the total assets in each of the Replaced Funds at December 31, 1999 that are attributable to the Variable Products, as well as other non-registered insurance products, and

compares the advisory fees and the expense ratios of the Replaced Funds for the six months ended December 31, 1999, with the pro forma advisory fees and expense ratios of the New Funds for the same periods. (Pro forma expense ratios of the New Funds are based on

assets in the Replaced Funds attributable to the Variable Products and other non-registered insurance products, and estimates of expenses associated with those assets had they been invested in the New Funds during the periods).

No.	New Fund			Replaced Fund		
	Name	Investment Objective	Investment Manager	Name	Investment Objective	Investment Manager
1.	Penn Series Mid Cap Value Fund	Capital growth by investing in common stocks of medium capitalization companies.	Neuberger Berman Management Inc.*	Neuberger Berman Partners Portfolio	Capital growth by investing in common stocks of medium-to-large capitalization established companies.	Neuberger Berman Management Inc.
2.	Penn Series Limited Maturity Bond Fund	Highest current income consistent with low risk to principal and liquidity; secondarily, total return by investing in short to intermediate term debt securities, primarily investment grade.	ICMI	Neuberger Berman Limited Maturity Bond Portfolio	Highest current income consistent with low risk to principal and liquidity; secondarily, total return by investing in short to intermediate term debt securities, primarily investment grade.	Neuberger Berman Management Inc.
3.	Penn Series Index 500 Fund	Total return which corresponds to that of the Standard & Poor's Composite Index of 500 stocks.	Wells Capital Management, Inc.*	Fidelity Investments' Index 500 Portfolio	Total return which corresponds to that of the Standard & Poor's Composite Index of 500 stocks.	Fidelity Management and Research Corporation**
4.	Penn Series Mid Cap Growth Fund	Capital growth by investing primarily in common stocks of mid capitalization growth companies.	Turner Investment Partners, Inc.*	American Century Capital Appreciation Portfolio	Capital growth by investing primarily in common stocks with better than average prospects for appreciation.	American Century Investment Management, Inc.

\* Sub-Adviser to ICMI.

\*\* Sub-advised by Bankers Trust Company.

14. Applicants expect to effect the Substitutions on or about May 1, 2000 in coordination with the distribution of annual prospectuses to Contractholders. As of the effective date of the Substitutions ("Effective Date"), shares of the Replaced Funds held by each of the Subaccounts of Applicant Separate Accounts will be presented to the Replaced Funds for redemption. The proceeds of such redemptions, which

may be effected through cash or "in-kind" transactions, will then be used to purchase the appropriate number of shares of the corresponding New Funds. The Substitutions will take place at relative net asset values, with no change in the contract value of any Affected Contractholder, and all redemptions of shares of the Replaced Funds and purchases of shares of the corresponding New Funds will be

effected in accordance with Rule 22c-1 under the 1940 Act.

15. Penn Mutual will bear the costs of the Substitutions, including any legal and/or accounting fees relating to them. Affected Contractholders will not incur any additional fees or charges as a result of the Substitutions; no current fees or charges applicable under any of the Variable Products will be increased as a result of the Substitutions; the rights of

Affected Contractholder under any of the Variable Products, and the obligations of Penn Mutual under the Variable Products will not diminish in any way.

16. Applicants state that as soon as practicable after filing the Application, a supplement to each of the prospectuses relating to the Variable Products will be filed with the Commission. These supplements ("Product Supplements") will reflect all material information relating to the Substitutions and the New Funds, including the identity of the Replaced Funds, a description of the New Funds and their respective investment objectives and policies, the Sub-Adviser for each of the New Funds, fees and expenses associated with the New Funds, and the impact that the Substitution will have on fees and expenses.

17. Following the date on which the notice of the Application is published in the **Federal Register**, but before the Effective Date, Penn Mutual will send to Affected Contractholders a notice ("Pre-Substitution Notice"), which will include the Product Supplements. The Pre-Substitution Notice will inform Affected Contractholders of: (a) The Effective Date of the Substitutions; (b) the right of each Affected Contractholder, under the VUL and VA Contracts, to transfer contract values among the various Subaccounts; and (c) the fact that any such transfer that involves a transfer from any of the Replaced Funds will not be subject to any administrative charge and will not count as one of the "free transfers" to which Affected Contractholders may otherwise be entitled.

18. Within five days after the Effective Date, Affected Contractholders will be sent written confirmation ("Confirmation Notice") of the substitution transactions. The Confirmation Notice will: (a) Confirm that the Substitutions were carried out; (b) reiterate that each Affected Contractholder may make one transfer of all of the contract value or cash value under their Variable Products that is invested in any one of the Subaccounts that were affected by the Substitutions to any other Subaccount available under their Variable Products without such transfer being subject to any administrative charge, or being counted as one of the "free transfers" (or one of the limited number of transfers) to which Affected Contractholders may be entitled under their Variable Products; and (c) state that Penn Mutual will not exercise any rights reserved by it under the Variable Products to impose additional restrictions on transfers until

at least 30 days after the Effective Date. The Confirmation Notice will be accompanied by a then-current prospectus for the relevant Variable Product, reflecting the inclusion of the New Funds, as well as an amended prospectus for the New Funds.

19. The in-kind redemption proceeds will consist of the same securities that are currently held by the Replaced Funds. Redemptions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the respective New Funds. Further, Applicants represent that the in-kind redemptions for each of the New Funds will be reviewed by the Sub-Adviser responsible for making day-to-day investment decisions for that Portfolio to assure that the investment objective, investment policies and diversification requirements set forth in the registration statement relating to the relevant New Fund are satisfied. In addition, the in-kind asset transfers will be valued in the manner that is consistent with the valuation procedures of both the Replaced Fund and the relevant New Fund. Applications state that any inconsistencies in valuation procedures between the Replaced Fund and the relevant New Fund will be reconciled so that the redeeming and purchasing values are the same. In addition, and consistent with Rule 17a-7 under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid in connection with the in-kind transactions.

20. The Variable Products expressly reserve to Penn Mutual the right, subject to compliance with applicable law, to substitute shares of one open-end investment company for shares of another open-end investment company held by a Separate Account.

#### **Applicant's Legal Analysis**

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitutions and related transactions. Applicants assert that the purposes, terms, and conditions

of the Substitutions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the Substitutions will not result in the type of forced redemption that Section 26(b) was designed to guard against.

3. Applicants maintain that the substitutions do not represent the type of transaction that Section 26(b) was designed to prevent for the following reasons: (a) the Substitutions are designed to give Penn Mutual more control over investment products it offers to the investing and insurance purchasing public; (b) Contractholders involved in Substitution Nos. 1, 3 and 4 will have the benefit of ICM's oversight of the Sub-Advisers; and (c) the procedures that Applicants will follow in the Substitutions will give Affected Contractholders ample notice of the Substitutions and any potential impact. Affected Contractholders will have the opportunity to transfer their investments from one of the Replaced Funds in anticipation of the Substitutions, or from the New Funds following the Substitution. In either case, Applicants represent that no administrative fee or transfer charge will be assessed. In light of the fact that only four of the 18 investment options currently available to Affected Contractholders will be involved in the Substitutions, Applicants believe that this ability to "opt out" of any Substitution affords each Affected Contractholder an effective choice of investments.

4. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliate of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person from purchasing any security or other property from such registered investment company.

5. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the in-kind redemptions and purchases from the provisions of Section 17(a). Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed

transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that, if effected in accordance with the procedures described in the Application and summarized herein, the Substitutions are consistent with the general purposes of the 1940 Act and do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Applicants state that the consideration to be paid by each New Fund, and received by each of the Replaced Funds, will be fair and reasonable and will not involve overreaching because the Substitutions will not result in the dilution of the interests of any Affected Contractholders and will not effect any change in economic interest, contract value or the dollar value of any Variable Products held by an Affected Contractholder. The in-kind redemptions and purchases will be done at values consistent with the policies of both the Replaced Funds and the New Funds and will satisfy the procedural safeguards of Rule 17a-7. Both ICMI and the Sub-Adviser of a New Fund will review all the asset transfers to assure that the assets meet the objectives of a New Fund and that they are valued under the appropriate valuation procedures of the Replaced Fund and such New Fund. The in-kind redemption proceeds will consist of the same securities that are currently held by the Replaced Funds. Applicants represent that the transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

7. Applicants state that the facts and circumstances in the application are sufficient to assure that the Substitutions will be carried out in a manner that is consistent with Sections 17(b) and 26(b) of the 1940 Act and that the terms and conditions to which Applicants will be subject hereby are consistent with orders the Commission has issued in the past under similar circumstances.

#### Applicants' Terms

The significant terms of the substitutions described in the application include:

1. The New Funds have objectives and policies that are substantially the same or substantially similar to the objectives and policies of the Replaced Funds so that the objectives of the Affected Contractholders can continue to be met.

2. The expense ratios of the New Funds will, immediately following the

Substitution, not exceed the expense ratios of the Replaced Funds. In the event that the expense ratio of a New Fund exceeds that of its corresponding Replaced Fund, Penn Mutual will waive its fees and/or reimburse expenses such that its expense ratio does not exceed that of its corresponding Replaced Fund's expense ratio. Penn Mutual will continue any such fee waivers and/or reimbursements, as necessary, until April 30, 2001, except that in the case of Substitution No. 2 (of the Penn Series Limited Maturity Bond Fund for the Neuberger Berman Limited Maturity Bond Portfolio), Penn Mutual will continue any such fee waiver and/or expense reimbursements, as necessary, until April 30, 2003.

3. Affected Contractholders may, under the terms of the Variable Products, transfer assets from any Subaccount of Applicant Separate Accounts to any other Subaccount available under the Variable Product. Any such transfer that involves a transfer from any of the Replaced Funds, from the date of the notice that the Replaced Funds will be substituted through a date at least 30 days following the Effective Date, will not be subject to any administrative charge, and will not count as one of any "free transfers" to which Affected Contractholder may otherwise be entitled. Affected Contractholders may also withdraw amounts under any contract held, or terminate their interest in any such contract, in accordance with the terms and conditions of any such contract, including but not limited to payment of any applicable surrender charge.

4. The Substitutions will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder, without the imposition of any transfer or similar charge by Applicants.

5. The Substitutions will take place at relative net asset value without change in the amount or value of any Variable Products held by Affected Contractholders. Affected Contractholders will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of Penn Mutual under such Variable Products be altered in any way. All expenses incurred in connection with the Substitutions, including legal, accounting and other fees and expenses, will be borne by Applicants, other than Separate Accounts.

6. Redemptions in kind will be handled in a manner consistent with the investment objectives, policies and diversification requirements of the New Fund. Consistent with Rule 17a-7(d)

under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid by the Replaced Funds or New Funds or Affected Contractholders in connection with the in-kind transactions. In addition, the in-kind asset transfers will be valued in the manner that is consistent with the valuation procedures of both the Replaced Fund and the relevant New Funds.

7. The Substitutions will not be counted as transfers in determining any limit on the total number of transfers that Affected Contractholders are permitted to make under the Variable Products.

8. The Substitutions will not alter in any way the annuity, life insurance, or other benefits afforded under the Variable Products held by any Affected Contractholders.

9. Each of the New Funds may rely upon a Commission order expected to be issued to certain affiliates of Penn Series. Applicants will take no action in reliance on the Manager of Managers Order with respect to any one of the New Funds unless and until the operation of that portfolio in the manner contemplated by the Manager of Managers Order is approved by the holders of a majority of the outstanding shares of that portfolio within the meaning of the 1940 Act by vote obtained following the Substitution.

#### Applicants' Conditions

Applicants state that they will not complete the Substitutions and related transactions described in this Application (other than the mailing of the Pre-Substitution Notices) unless all of the following conditions are met:

1. The Commission shall have issued an order (a) approving the Substitutions under Section 26(b) of the 1940 Act, and (b) exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. Each Affected Contractholder will have been sent a Pre-Substitution Notice, which will include the Prospectus Supplements and will inform Affected Contractholders of: (a) The Effective Date of the Substitutions; (b) the right of each Affected Contractholder, under the Variable Products, to transfer contract values among the various Subaccounts; and (c) the fact that any such transfer that involves a transfer from any of the Replaced Funds will not be subject to any administrative charge and will not count as one of any "free transfers" to

which Affected Contractholders may otherwise be entitled.

3. Each Affected Contractholder will receive, within five days following the Effective Date of Substitutions, written notice ("Confirmation Notice"). The Confirmation Notice will: (a) Confirm that the Substitutions were carried out; (b) reiterate that each Affected Contractholder may make one transfer to all of the contract value or cash value under their Variable Product that is invested in any one of the Subaccounts that were affected by the Substitutions to any other Subaccount available under their Variable Product without such transfer being subject to any administrative charge, or being counted as one of any "free transfers" (or one of the limited number of transfers) to which Affected Contractholders may be entitled under their Variable Product; and (c) state that Penn Mutual will not exercise any rights reserved by it under the Variable Products to impose additional restrictions on transfers until at least 30 days after the Effective Date. The Confirmation Notice will be accompanied by a then-current prospectus for the relevant Variable Product, reflecting the inclusion of the New Funds, as well as an amended prospectus for the New Funds.

4. Penn Mutual shall have satisfied itself, that: (a) The Variable Products allow the substitution of investments in the manner contemplated by the Substitutions and related transactions described herein; (b) the transactions can be consummated as described in this Application under the applicable insurance laws; and (c) that any regulatory requirements in each jurisdiction where the Variable Products are qualified for sale, have been complied with to the extent necessary to complete the transactions.

### Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions and related transactions involving in-kind transactions should be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00-9398 Filed 4-12-00; 10:11 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27162]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 7, 2000.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 2, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 2, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Unitil Corporation (70-8050)

Unitil Corporation ("Unitil"), 6 Liberty Lane West, Hampton, New Hampshire 03842-1720, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act to a declaration previously filed under the Act.

By orders dated November 16, 1992 and February 7, 1997 (NCAR Nos. 25677 and 26663) ("Orders"), Unitil has authorized, among other things, to issue and sell up to 253,654 shares ("DRIP Shares") of its no par value common stock ("Common Stock) under its dividend reinvestment and stock purchase plan ("DRIP Plan"). As of February 1, 2000, 15,030 of the authorized DRIP Shares remained unsold. The Orders also authorized Unitil to issue and sell up to 229,636 shares ("401(k) Shares" and, together with DRIP Shares, "Authorized

Shares")<sup>1</sup> of Common Stock under its tax-deferred savings and investment plan ("401(k) Plan"). As of February 1, 2000, 44,393 of the authorized 401(k) Shares were unsold.

In addition to the Authorized Shares, Unitil now proposes to issue and sell up to 200,000 shares of its Common Stock under its DRIP Plan and up to 150,000 shares under its 401(k) Plan. Shares available for issuance under each of these plans may come from authorized but unissued Common Stock or from Common Stock purchased by Unitil on the open market.

#### Unitil Corporation (70-9633)

Unitil Corporation ("Unitil"), a registered holding company under the Act, and its subsidiary companies, Concord Electric Company, Exeter & Hampton Electric Company, Fitchburg Gas and Electric Light Company ("Fitchburg"), Unitil Power Corp., Unitil Realty Corp., Unitil Resources, Inc. and Unitil Service Corp. ("Unitil Service") (collectively, "Subsidiaries" and, together with Unitil, "Applicants"), all at 6 Liberty Lane West, Hampton, New Hampshire 03842, have filed an application-declaration under sections 6(b), 9(a), 10 and 12(b) of the Act and rules 43 and 45 under the Act.

By order dated June 30, 1997 (HCAR No. 26737), Applicants were authorized to make unsecured short-term borrowings and to operate a system money pool ("Money Pool") through June 30, 2000. The Applicants now request authority to make additional short-term borrowings and extend the operation of the Money Pool through June 30, 2003 ("Authorization Period").

Specifically, Unitil requests authority to incur short-term borrowings from banks in an aggregate amount that will not exceed \$25 million outstanding. In addition, Fitchburg requests authority to incur short-term borrowings from third parties and the other Applicants, and Unitil and the other Subsidiaries request authority to lend funds to Fitchburg under the Money Pool.<sup>2</sup> Borrowings by Fitchburg under the Money Pool and its short-term borrowings from banks would not exceed \$20 million at any one time outstanding.

Unitil's existing<sup>3</sup> and proposed borrowing arrangements will provide for borrowings at (1) "base" or "prime"

<sup>1</sup> The number of Authorized Shares was adjusted to reflect a two-for-one stock split that occurred on December 11, 1992.

<sup>2</sup> Applicants claim that borrowings by the Subsidiaries other than Fitchburg are exempt from Commission review under rule 52 under the Act.

<sup>3</sup> As of February 17, 2000, Unitil had three unsecured lines of credit totaling \$23 million.

rates publicly announced by a bank as the rate charged on loans to its most creditworthy business firms; or (2) "money market" rates (market-based rates that are generally lower than base or prime rates, made available by banks on an offering or "when available" basis). In addition, borrowings may be based on the daily federal funds rate. Borrowings under the credit arrangements will mature not more than nine months from the date of issue.

Unitil expects to use the proceeds from the requested borrowings for: (1) loans or advances to subsidiaries through the money pool; (2) payment of outstanding indebtedness; (3) short-term cash needs that may arise due to payment timing differences; and (4) other general corporate purposes.

Any of the proposed short-term borrowings by Fitchburg from commercial banks will be under terms and conditions substantially similar to those of the borrowing arrangements between Unitil and its commercial bank lenders, described above. Fitchburg will use the proceeds from these borrowings to meet working capital requirements, provide interim financing for construction expenditures, and to meet debt and preferred stock sinking fund requirements.

The Applicants participate in the Unitil system money pool in accordance with a pooling agreement ("Pooling Agreement"). Under the Pooling Agreement, Unitil and the Subsidiaries invest their surplus funds, and the Subsidiaries borrow funds, from the money pool. Unitil Service administers the money pool on an "at cost" basis. The purpose of the Money Pool is to provide the Subsidiaries with internal and external funds and to invest surplus funds of Unitil and the Subsidiaries in short-term money market instruments. The Applicants state that the Money Pool provides the Subsidiaries with lower short-term borrowing costs due to elimination of banking fees; a mechanism to earn a higher return on interest from surplus funds that are loaned to other Subsidiaries; and decreased reliance on external funding sources.

#### **Cinergy Corp., et al. (70-9577)**

Cinergy Corp., a registered holding company ("Cinergy"), and its direct wholly owned nonutility subsidiaries Cinergy Global Resources, Inc. and Cinergy Investments, Inc., all located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed an application-declaration ("Application") with the Commission under sections 6(a), 7, 9(a), 10, 12, 32 and 33 of the Act and rules 45, 53 and 54 under the Act.

#### *Background*

##### *Cinergy's Public Utility Subsidiaries*

Through its six domestic retail public utility companies—PSI Energy, Inc., an Indiana electric utility ("PSI"), the Cincinnati Gas & Electric Company, an Ohio electric and gas utility ("CG&E"), the Union Light, Heat and Power Company, a Kentucky electric and gas utility ("Union Power"), Lawrenceburg Gas Company, an Indiana gas utility ("Lawrenceburg"), the West Harrison Gas and Electric Company, an Indiana electric utility ("West Harrison") and Miami Power Corporation, an electric utility ("Miami Power")<sup>4</sup>—Cinergy provides retail electric service in north central, central and southern Indiana and retail electric and gas service in the southwestern portion of Ohio and adjacent areas of Indiana and Kentucky.<sup>5</sup>

CG&E produces, transmits, distributes and sells electricity and sells and transports natural gas in the southwestern portion of Ohio, serving an estimated population of 1.6 million people in 10 of the state's 88 counties, including the cities of Cincinnati and Middletown.<sup>6</sup> At and for the twelve months ended December 31, 1999, CG&E had total consolidated assets of approximately \$4.9 billion and operating revenues of approximately \$2.6 billion.

PSI produces, transmits, distributes and sells electricity in north central, central and southern Indiana, serving as estimated population of 2.2 million people located in 69 of the state's 92 counties including the cities of Bloomington, Columbus, Kokomo, Lafayette, New Albany and Terre Haute. At and for the twelve months ended December 31, 1999, PSI had total consolidated assets of approximately \$3.8 billion and operating revenues of approximately \$2.1 billion.

<sup>4</sup> The Application states that Miami Power is an electric utility company solely by virtue of its ownership of certain transmission assets.

<sup>5</sup> CG&E and PSI are direct, wholly owned subsidiaries of Cinergy. Union Power, Lawrenceburg, West Harrison and Miami Power are direct, wholly owned subsidiaries of CG&E and indirect, wholly owned subsidiaries of Cinergy.

<sup>6</sup> Union Power transmits, distributes and sells electricity and sells and transports natural gas in northern Kentucky, serving an estimated population of 328,000 people in a 500 square mile area encompassing six counties, including the cities of Newport and Covington. Lawrenceburg sells and transports natural gas to approximately 20,000 people in a 60 square mile area in southeastern Indiana. West Harrison sells electricity over a three square mile area with a population of approximately 1,000 in West Harrison, Indiana, and bordering rural areas. Miami Power owns a 138 kilovolt transmission line running from the Miami Fort Power Station in Ohio to a point near Madison, Indiana.

##### *Cinergy's Existing Financing Authority*

By order dated March 23, 1998 (Holding Co. Act Release No. 26848) ("100% Order"), the Commission amended certain prior orders issued to Cinergy and authorized Cinergy to use the proceeds of certain financing transactions to invest in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs") and, together with EWGs "EWG/FUCO Projects"), provided that Cinergy's aggregate investment in EWG/FUCO Projects does not exceed 100% of Cinergy's consolidated retained earnings ("100% Limit"), subject to certain conditions.<sup>7</sup>

At December 31, 1999, Cinergy's aggregate investment in EWG/FUCO Projects was approximately \$580 million and its consolidated retained earnings were approximately \$1,023 million, leaving available investment capacity under the 100% Order of approximately \$443 million at that date.

Under the following Commission orders, Cinergy is authorized to issue common stock, debt securities and to provide for general corporate purposes including, among other things, investing in EWG/FUCO Projects up to the 100% Limit:

*Short-Term Debt; \$2 Billion Debt Limit; Common Stock.* By order dated January 20, 1998 (Holding Co. Act Release No. 26819) ("January 1998 Order"), as subsequently modified by order dated March 1, 1999 (Holding Co. Act Release No. 26984) ("March 1999 Order"), the Commission authorized Cinergy to issue and sell, from time to time through December 31, 2002: (a) short-term notes and commercial paper and an aggregate principal amount not to exceed, together with the principal amount of long-term debentures referred to below, \$2 billion at any time outstanding, and (b) up to 30,867,385 shares of Cinergy common stock.

*Long-Term Debentures.* By order dated August 21, 1998 (Holding Co. Act Release No. 26909) ("August 1998 Order"), the Commission authorized Cinergy to issue and sell, from time to time through December 31, 2002, unsecured debentures with maturities of two of 15 years in an aggregate principal amount at any time outstanding not to exceed \$400 million, subject to the \$2 billion debt cap described above.

*Guarantees; \$1 Billion Limit.* The March 1999 Order (a) consolidated authority granted to Cinergy under prior orders to issue guarantees of obligations of system companies, and (b) imposed

<sup>7</sup> The terms "aggregate investment" and "consolidated retained earnings" are defined in rule 53(a)(1) under the Act.

any overall cap of \$1 billion (separate from the \$2 billion debt cap described above) on the amount of Cinergy guarantees issued and outstanding from time to time through December 31, 2003. Among other things, the March 1999 Order also expanded Cinergy's existing authority to create intermediate subsidiaries to hold interests in nonutility businesses, including EWG/FUCO Projects.<sup>8</sup>

#### Proposed Financing Authority

Cinergy asserts its investment capacity remaining under existing Commission orders is not sufficient to enable Cinergy to grow its business and adapt to industry-wide restructuring. Cinergy therefore requests greater authority to invest in EWG/FUCO Projects and general revisions to outstanding Commission orders granting Cinergy authority to issue debt and equity securities, issue guarantees, and engage in other financing transactions. Cinergy's proposed increased financing authority, discussed in more detail below ("Proposed Financing Transactions"), is intended to enable Cinergy to respond quickly and efficiently to its financing needs and available conditions in capital markets.

*Proposed Limits on Investments in EWG/FUCO Projects and Restructuring Subsidiaries.* Over a five-year period beginning with issuance of the requested order from the Commission ("Authorization Period"), Cinergy proposes to apply proceeds from the proposed financing transactions described below to make additional investments in EWG/FUCO Projects, subject to the following limitations:

*EWG/FUCO Projects Limit.* Cinergy's aggregate investment in EWG/FUCO Projects would not exceed the sum of (a) an amount equal to 100% of Cinergy's consolidated retained earnings, plus (b) \$2 billion (together, "EWG/FUCO Projects Limit"), excluding any investments subject to the Restructuring Limit (defined below).<sup>9</sup>

<sup>8</sup> The March 1999 Order also modified the January 1998 Order by removing Cinergy guarantees from the \$2 billion debt cap and, instead, making the guarantees subject to the \$1 billion cap.

<sup>9</sup> As noted above, based on Cinergy's aggregate investment and consolidated retained earnings of approximately \$580 million and \$1,023 million, respectively, at December 31, 1999, Cinergy had approximately \$443 million of additional investment authority in EWG/FUCO Projects remaining under the 100% Order at that date. Assuming Cinergy's utilization of all the investment authority under the 100% Order and its utilization of all of the additional \$2 billion of investment authority requested for EWG/FUCO Projects, these investments would represent approximately 296% of Cinergy's consolidated retained earnings at December 31, 1999.

*Restructuring Limit.* With respect to solely to the transfer of CG&E's and PSI's generating assets to one or more EWG affiliates ("Restructuring Subsidiaries"), Cinergy's aggregate investment in Restructuring Subsidiaries would not exceed the net book value of the generating assets at the time of transfer ("Restructuring Limit"). The net book value of CG&E's and PSI's generating assets at December 31, 1999 was approximately \$2.9 billion.<sup>10</sup>

*Effect Upon Existing Financing Authority.* Cinergy proposes to replace the January 1998 Order and the August 1998 Order, each in its entirety, and to supersede the March 1999 Order solely to the extent of the guarantee authority granted in that order, with new financing authority, the terms of which are described below. As with the existing authority, the new authority would be used for general corporate purposes, including to fund investments in EWG/FUCO Projects.

*Aggregate Financing Limit; Guarantee Limit.* Subject to the terms and conditions described below, from time to time through the Authorization Period, Cinergy proposes (a) to increase its total capitalization (excluding retained earnings and accumulated other comprehensive income<sup>11</sup>) by \$7 billion through issuance and/or sale of any combination of debt or equity securities, whether directly or through one or more special purpose subsidiaries ("Aggregate Financing Limit"), and (b) to increase the level of its guarantees outstanding at any time to an aggregate of \$2 billion ("Guarantee Limit"), all without further authorization from the Commission. At December 31, 1999, Cinergy's total capitalization (excluding retained earnings and accumulated other comprehensive loss) totaled approximately \$2 billion, and Cinergy's subsidiaries and affiliates had debt or other obligations outstanding totaling

<sup>10</sup> Together CG&E and PSI own all of or partial interests in 17 primarily coal-fired, electric generating stations located in Ohio, Indiana and Kentucky, having a total installed capacity allocable to these ownership interests of approximately 11,200 megawatts and a current net book value of approximately \$2.9 billion (\$1.75 billion of which represents CG&E's share).

<sup>11</sup> Under Statement of Financial Accounting Standards No. 130, Reporting Comprehensive Income, "accumulated other comprehensive income" includes all components of common stock equity that are not included as net income or the result of shareholder transactions (e.g., stock issuances or dividends). At December 31, 1999, components of Cinergy's accumulated other comprehensive income consisted of foreign currency translations, minimum pension liability adjustments and unrealized gains and losses on grantor and rabbi trusts.

approximately \$515 million supported by Cinergy guarantees.

*General Terms and Conditions Applicable to Proposed Financing Authority.* The Proposed Financing Transactions are subject to the following terms and conditions:

#### Debt Securities

*Short-Term Notes.* From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy proposes to make short-term borrowings from banks or other financial institutions. These borrowings would be evidenced by (a) "transactional" promissory notes to mature not more than one year after the date of the related borrowing, or (b) "grid" promissory notes evidencing all outstanding borrowings from the respective lender, to be dated as of the date of the first borrowing evidenced by the notes, with each borrowing maturing not more than one year after that date. Any note may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment.

*Commercial Paper.* From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell commercial paper through one or more dealers or agents or directly to a limited number of purchasers if the resulting cost of money is equal to or less than that available from commercial paper placed through dealers or agents. Cinergy proposes to issue and sell the commercial paper at market rates with varying maturities not to exceed 270 days. The commercial paper would be in the form of book entry unsecured promissory notes with varying denominations of not less than \$25,000 each. In commercial paper sales effected on a discount basis, no commission or fee would be payable; however, the purchasing dealer would re-offer the commercial paper at a rate less than the rate to Cinergy. The discount rate to dealers would not exceed the maximum annual discount rate prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer would re-offer the commercial paper in a manner that would not constitute a "public offering" under the Securities Act of 1933, as amended ("Securities Act").

*Long-Term Notes.* From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell

long-term debt securities ("Notes") in one or more series

Notes of any series may be either senior or subordinated obligations of Cinergy. If issued on a secured basis, Notes would be secured solely by common stock, or other assets or properties, of one or more of Cinergy's nonutility subsidiaries (other than any nonutility subsidiary of CG&E or PSI). Notes of any series (a) would have maturities greater than one year, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (c) may be entitled to mandatory or optional sinking fund provisions, and (d) may be convertible or exchangeable into common stock of Cinergy. Interest accruing on Notes of any series may be fixed or floating or "multi-modal."<sup>12</sup> Notes would be issued under one or more indentures to be entered into between Cinergy and one or more financial institutions acting as trustee, supplemental indentures may be executed for separate offerings of one or more series of Notes.

Notes may be issued in private or public transactions. With respect to private issuances, Notes of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the Notes without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time Cinergy may also issue and sell Notes of one or more series to the public either (a) through underwriters selected by negotiation or competitive bidding, or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The maturity dates, interest rates, redemption and sinking fund provisions, if any, with respect to the Notes of a particular series, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable indenture or supplement and purchase agreement or underwriting agreement.

*Certain Conditions Applicable to Debt Securities.* Cinergy represents that the

interest rate on any series of debt security with a maturity of one year or less would not exceed the greater of (a) 300 basis points over the comparable term London interbank offered rate, or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issues by other companies.

Cinergy also represents that the interest rate on any series of debt security with a maturity greater than one year would not exceed the greater of (a) 300 basis points over the comparable term U.S. Treasury securities or other market accepted benchmark securities, or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Cinergy further represents that, solely with respect to investments in EWG/FUCO projects under the EWG/FUCO Projects Limit, Cinergy would not issue any additional debt securities to finance these investments if upon original issuance Cinergy's senior debt obligations are not rated investment grade by at least two of the major ratings agencies (*i.e.*, Standard & Poor's Corporation ("S&P"), Fitch Investor Service ("Fitch"), Duff & Phelps Credit Rating Co. ("D&P") and Moody's Investor Service ("Moody's")).

*Interest Rate Risk Management.* In connection with the issuance and sale of the short- and long-term debt securities described above, Cinergy proposes to manage interest rate risk through the use of various interest rate management instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, options, forwards, futures and similar products designed to manage interest rate risks.

Cinergy would enter into agreements covering these derivative transactions with highly rated financial institutions (*i.e.*, whose senior secured debt, at the date of execution of the agreement with Cinergy, is rated at least "A-" by S&P, Fitch or D&P or "A3" by Moody's). The derivative transactions would be for fixed periods and in no case would the notional principal amount exceed the principal amount of the underlying debt security. Cinergy would not engage in "leveraged" or "speculative" derivative transactions.

Fees, commissions and annual margins in connection with any interest rate management agreements would be no more than 100 basis points above the principal or notional amount of the related debt securities or interest rate management agreement. In addition, with respect to options such as caps and collars, Cinergy may pay an option fee which, on a net basis (*i.e.*, when netted

against any other option fee payable with respect to the same security), would not exceed 10% of the principal amount of the debt covered by the option.

#### Equity Securities

*Common Stock; Stock Purchase Contracts; Stock Purchase Units.* At December 31, 1999, Cinergy had 600 million shares of common stock authorized for issuance, 158,923,399 shares of which were issued and outstanding. Cinergy states that it has issued 771,258 shares of common stock under the January 1998 Order.

From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy proposes to issue and sell additional shares of its common stock (a) through solicitations of proposals from underwriters or dealers, (b) through negotiated transactions with underwriters or dealers, (c) directly to a limited number of purchasers or to a single purchaser, and/or (d) through agents. The price applicable to additional shares sold in any of these transactions would be based on several factors, including the current market price of the common stock and prevailing capital market conditions.

Cinergy also proposes to issue and sell from time to time stock purchase contracts ("Stock Purchase Contracts"), including contracts obligating holders to purchase from Cinergy, and/or Cinergy to sell to the holders, a specified number of shares or aggregate offering price of Cinergy common stock at a future date. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula. The Stock Purchase Contracts may be issued separately or as part of units ("Stock Purchase Units") consisting of a Stock Purchase Contract and debt and/or preferred securities of Cinergy and/or debt obligations of nonaffiliates, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of Cinergy under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations.

Further, Cinergy requests authorization to issue common stock as consideration, in whole or part, for acquisitions by Cinergy or any nonutility subsidiary of securities of businesses, the acquisition of which (a) is exempt under the Act or the rules under the Act, or (b) has been authorized by effective Commission order issued to Cinergy or any of

<sup>12</sup> According to the Application, a "multi-modal" interest rate provides for periodic resetting of the interest rate, which alternates between fixed and floating interest rates for each reset period, with all accrued and unpaid interest together with interest becoming due and payable at the end of each reset period.

Cinergy's nonutility subsidiaries, subject in either case to applicable limitations on total investments in any of these businesses. The shares of Cinergy common stock issued in any of these transactions would be valued at market value based on the closing price on the day before closing of the sale, on average high and low prices for a period prior to the closing of the sale, or on some other method negotiated by the parties.

Cinergy represents that, except in the case of the transactions covered by the Restructuring Limit, common equity would comprise at least 30% of Cinergy's consolidated capitalization (based upon the financial statements included in Cinergy's most recent quarterly report on Form 10-Q or annual report on Form 10-K filed with the Commission under the Securities Exchange Act of 1934, as amended).

*Preferred Securities.* From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell preferred securities in one or more series. Preferred securities of any series (a) would have a specified par or stated value or liquidation value per security, (b) would carry a right to periodic cash dividends and/or other distributions, subject, among other things, to funds being legally available for that purpose, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated or liquidation value, (d) may be convertible or exchangeable into common stock of Cinergy, and (e) may bear additional rights, including voting, preemptive or other rights, and other terms and conditions, contained in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of that series of preferred securities.

Preferred securities may be issued in private or public transactions. With respect to private transaction, preferred securities of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the preferred securities without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time Cinergy may also issue and sell preferred securities of one or more series to the public either (a) through underwriters selected by negotiation or competitive bidding, or (b) through selling agents acting either as agent or

as principal for resale to the public either directly or through dealers.

The liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of preferred securities, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement or underwriting agreement, and other relevant instruments.

Cinergy represents that the distribution rate on any series of preferred security would not exceed the greater of (a) 400 basis points over the comparable term U.S. Treasury securities or other market accepted benchmark securities, or (b) a rate that is consistent with similar securities of comparable credit quality and structure issued by other companies.

Cinergy represents that the underwriting fees, commissions or similar remuneration paid in connection with the issue, sale or distribution of any authorized securities (excluding interest rate risk management instruments, as to which separate provisions governing fees and expenses are proposed below) would not exceed 700 basis points of the principal or face amount of the securities issued or gross proceeds of the financing.

#### Financing Conduits

Cinergy requests approval to form one or more subsidiaries for the sole purpose of issuing and selling any of the proposed securities, lending, paying dividends or otherwise transferring the proceeds to Cinergy or any entity designated by Cinergy, and engaging in incidental transactions, subject to the Aggregate Financing Limit and other terms and conditions described below.

The proposed subsidiaries would comprise one or more financing subsidiaries (each, a "Financing Subsidiary") and one or more special purpose entities (each, a "Special Purpose Entity," and, together with Financing Subsidiaries, "Financing Conduits"). In either case the subsidiaries' businesses would be limited to issuing and selling securities on behalf of Cinergy, the subsidiaries would have no substantial physical assets or properties. Any securities issued by the Financing Conduits would be fully guaranteed, directly or indirectly, by Cinergy.

Cinergy would acquire all of the outstanding shares of common stock or

other equity interests of the Financing Subsidiary for an amount not less than the minimum required by applicable law. The business of the Financing Subsidiary would be limited to effecting financing transactions with third parties for the benefit to Cinergy and its subsidiaries. As an alternative to Cinergy directly issuing debt or equity securities, or through a Special Purpose Entity, Cinergy may determine to use a Financing Subsidiary as the nominal issuer of the particular debt or equity security. In that circumstances, Cinergy would provide a full guarantee or other credit support with respect to the securities issued by the Financing Subsidiary, the proceeds of which would be lent, paid by dividend or otherwise transferred to Cinergy or an entity designated by Cinergy. Cinergy explains that the primary reason for the use of a Financing Subsidiary would be to segregate financing for the different businesses conducted by Cinergy, distinguishing between securities issued by Cinergy to finance its investments in nonutility businesses from those issued to finance its investments in its core utility businesses. A separate Financing Subsidiary may be used by Cinergy with respect to different types of nonutility businesses.

Cinergy would use Special Purpose Subsidiaries in connection with certain financing structures for issuing debt or equity securities, in order to achieve a lower cost of capital, or incrementally greater financial flexibility or other benefits, than would otherwise be the case.

#### Guarantees

Cinergy also proposes to supersede its existing guarantee authority, limited to \$1 billion under the March 1999 Order, with greater authority intended to accommodate growth in its business.

Specifically, from time to time through the Authorization Period, Cinergy requests authority to guarantee, obtain letters of credit and otherwise provide credit support (each, a "Guarantee") in respect of the debt or other securities or obligations of any or all of Cinergy's subsidiary or associate companies (including any formed or acquired at any time over the Authorization Period), and otherwise to further the business of Cinergy, provided that the total amount of Guarantees at any time outstanding does not exceed the Guarantee Limit, and provided further, that (a) any Guarantees of EWG/FUCO Projects would also be subject to the EWG/FUCO Projects Limit or Restructuring Limit, as applicable, and (b) any Guarantees of energy-related companies within the

meaning of rule 58 under the Act ("Rule 58 Companies") would also be subject to the aggregate investment limitation of rule 58.<sup>13</sup> The terms and conditions of any Guarantees would be established at arm's length based upon market conditions.

In the event that Cinergy issues any authorized debt or equity securities by means of any Financing Conduits, Cinergy would provide a full Guarantee in respect of the payment and other obligations of the Financing Conduit under the securities issued by it. As any securities nominally issued by a Financing Conduit are, in substance, securities issued by Cinergy itself, any securities issued by a Financing Conduit would count dollar-for-dollar against the Aggregate Financing Limit, but not against the Guarantee Limit.

#### Use of Proceeds

Cinergy proposed to issue the authorized debt and equity securities for general corporate purposes, including: (a) payments, redemptions, acquisitions and refinancing of outstanding securities issued by Cinergy; (b) acquisitions of and investments in EWG/FUCO Projects, provided that Cinergy's aggregate investment in these projects does not exceed the EWG/FUCO Projects Limit or Restructuring Limit, as applicable; (c) acquisitions of, and investments in, Rule 58 Companies, provided that Cinergy's aggregate investments in these companies does not exceed the aggregate investment limitation of rule 58; (d) loans to, and investments in, other system companies, including through the Cinergy system money pool<sup>14</sup>; and (e) other lawful corporate purposes.

As previously described, in the event Cinergy utilizes Financing Conduits to issue authorized securities, these entities would apply the proceeds of securities nominally issued by them to make loans, dividends or other transfers to Cinergy or an entity designated by Cinergy, which would then be applied for any of the purposes listed above.

#### Intrasystem Transfer of Generating Assets

Cinergy states that, as a result of state restructuring of the electric utility industry, it intends to transfer all or a substantial portion of the generating assets owned by CG&E and, eventually, PSI, to one or more newly formed

Restructuring Subsidiaries and subject to the Restructuring Limit. Cinergy has requested authority over the Authorization Period to make investments in these Restructuring Subsidiaries in an amount not to exceed the net book value of the generation assets transferred by CG&E and PSI to these affiliates. Cinergy states that the net book value at December 31, 1999 of these assets was approximately \$2.9 billion.

CG&E and PSI own significant electric generating facilities. The generating assets are either wholly owned by CG&E or PSI or jointly owned with other utilities, and are located in Ohio and Indiana, with the exception of one plant in Kentucky owned by CG&E. The installed capacity and net book value of the generation assets allocable to CG&E's and PSI's ownership interests are 11,221 megawatts and \$2.892 billion, respectively, at December 31, 1999, with 5,245 megawatts of installed capacity having a net book value of \$1.755 billion allocable to CG&E, and 5,976 megawatts of installed capacity having a net book value of \$1.137 billion allocable to PSI. None of Cinergy's other utility subsidiaries own any electric generating facilities.

Comprehensive electric restructuring legislation was passed in Ohio in July 1999.<sup>15</sup> As discussed in the Application, under the new law, all retail customers in Ohio can choose their electric supplier commencing January 1, 2001.

The legislation deregulates electric generation and supply, with electric transmission and distribution continuing as regulated utility functions. According to Cinergy, although it does not require restructuring or divestiture of generating assets, the new Ohio legislation encourages that result in order to foster generation supplier diversity and curb potential market power of incumbent utilities. As an incumbent Ohio electric utility, CG&E is required to separate its existing functions pertaining to competitive retail sale of generation service from those pertaining to transmission and distribution service, and to transfer the generation services into a separate legal entity. The legislation requires that utilities devise incentives to induce 20% of their electric loads by customer class to switch providers by halfway through a "market development period," but in no event later than December 31, 2003.

Other provisions of the law include: (a) A 5% reduction in the generation component of rates for every residential customer beginning January 1, 2001, (b)

the establishment of a "market development period" (*i.e.*, the transition period to full competition) beginning January 1, 2001 and ending no later than December 31, 2005; (c) a "freeze" of utility rates for non-switching customers through the market development period; (d) an opportunity for incumbent utilities to recover transition costs approved by the Public Utilities Commission of Ohio ("PUCO") over the market development period; (e) an opportunity for incumbent utilities to recover regulatory assets through December 31, 2010, if approved by the PUCO; (f) a requirement that incumbent utilities transfer either ownership or control of their transmission assets to an independent transmission entity before December 31, 2003; (g) a requirement that incumbent utilities provide retail electric service to native load customers who decline to switch to different suppliers or who desire to return to service from the incumbent utility; and (h) a requirement that incumbent utilities file a proposed transition plan by December 31, 1999.

As required by the legislation, CG&E filed its proposed transition plan with the PUCO on December 28, 1999. The transition plan is comprised of eight component plans—a rate unbundling plan, corporate separation plan, operational support plan, employee assistance plan, consumer education plan, application for receipt of transition revenues, independent transmission plan and shopping incentive plan. The PUCO is required to issue its order on the transition plan of all incumbent utilities no later than October 31, 2000.

In its transition plan, CG&E has proposed to meet its corporate separation obligations in part by legally separating the generation from the transmission and distribution businesses, transferring all of its generating assets to one or more affiliated EWGs. The generation assets would be moved as soon as practicable after PUCO approval. The asset transfer is contingent on various other factors, including receipt from the Ohio, Indiana and Kentucky utility regulatory commissions of the findings required under section 32(c) of the Act.<sup>16</sup> Concurrent with the transfer of the generation assets CG&E would enter into a power purchase agreement with the

<sup>13</sup> Rule 58(a)(1) limits the aggregate investment by a registered holding company in rule 58 subsidiaries to the greater of \$50 million, or 15% of the consolidated capitalization of the registered holding company.

<sup>14</sup> See Holding Co. Act Release Nos. 26362 (Aug. 25, 1995) and 26723 (May 30, 1997).

<sup>15</sup> Ohio Rev. Code Ann. § 4928.01 *et seq.* (1999).

<sup>16</sup> Subject to certain conditions, section 32(c) provides that, in order for an existing rate-based facility to be deemed an "eligible facility," the state commission responsible for ratemaking "must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law." See 15 U.S.C. 79z-5a(c).

EWG approved by the Federal Energy Regulatory Commission. The power purchase agreement would grant CG&E a first call on all power produced by the EWG at embedded cost through the end of the market development period, ensuring CG&E sufficient power to meet its electric supply obligations to customers who do not switch or who return. Cinergy states that it has no current intention of establishing an affiliate of CG&E to market competitive generation services to retail customers in Ohio, as permitted by the new legislation.

As part of its proposed transition plan, CG&E filed a request to recover transition costs comprised of generation-related regulatory assets in the total amount of \$364 million (excluding carrying charges) and above-market generation costs in the total amount of \$563 million (excluding carrying charges), in each case beginning January 1, 2001. The total carrying costs, for which CG&E has also requested recovery, are estimated at \$311 million.

Although comprehensive electric industry restructuring legislation has not yet been enacted in Indiana, Cinergy expects that this legislation will be enacted before expiration of the Authorization Period. Moreover, Cinergy asserts that existing statutory provisions in the Indiana Code for "alternative" regulation of utilities provide a basis for Cinergy to seek approval from the Indiana Utility Regulatory Commission to transfer PSI's generating facilities to Restructuring Subsidiaries prior to the adoption of state-wide restructuring.

Cinergy maintains in the Application that it needs the flexibility to reposition the generation assets now held by CG&E and PSI to maximize the value of those assets in a competitive environment. Cinergy states that, like a number of other utilities in states undergoing restructuring, it is seeking to achieve asset flexibility and optimization by transferring the assets to Restructuring Subsidiaries, where they can be used for electric sales back to the affiliated transmission and distribution utility or marketed for sale to off-system buyers, either with respect to all or some of the particular assets. According to the Application, Cinergy's current intention is to convert all or a substantial number of CG&E's and PSI's power plants to EWG status, since Cinergy believes that corporate disaggregation will eventually be required for the entire portfolio of generating properties, not merely CG&E's plants. Therefore, Cinergy has requested a separate investment ceiling—the Restructuring Limit—with

a view to restructuring both CG&E's and PSI's generating assets. Cinergy further states that, although it likely would not make permanent recourse investments equal to the full amount of the book value of the transferred assets, Cinergy could be required to make investments of that magnitude, on a short-term basis, if "bridge" financing becomes necessary. Cinergy asserts that the overriding purpose of the Restructuring Limit is to afford it sufficient financial flexibility under the Act to pursue a variety of alternatives in an uncertain and changing regulatory environment.

Cinergy states that the generating assets would be transferred in one or more transactions, as soon as practicable after receipt of necessary regulatory approvals and satisfaction of other conditions. Cinergy has engaged Donaldson, Lufkin & Jenrette ("DLJ") to provide financial advice in connection with these transactions.

Cinergy proposes two basic transaction structures by which CG&E and PSI (each, a "Generating Utility") would transfer their generating assets to the Restructuring Subsidiaries. Under the "Sale Scenario," the Generating Utility sells generating assets, for case and/or promissory notes or other consideration, directly to one or more newly created subsidiaries of Cinergy ("Genco"), held either directly by Cinergy or indirectly by one or more newly created, special purpose intermediate holding companies directly held by Cinergy ("Genco Holdco"). Under the "Spin-Off Scenario," the Generating Utility contributes its generating assets to Genco for shares of stock or other equity securities of Genco. The Generating Utility then distributes its investment in Genco to Cinergy by dividend or otherwise, and Cinergy then contributes the stock or other equity to Genco Holdco. Genco may transfer its generating assets into one or more special purpose subsidiaries; for example, Cinergy may establish a separate subsidiary for each power plant.

Under both scenarios, the assets would likely be transferred at net book value. The decision to use a particular transaction structure would depend, among other factors, on whether the transaction can be structured on a tax-deferred basis and other transaction costs. Under either scenario, Genco would have an initial capitalization equal to the value of the transferred generating assets, approximately \$2.9 billion (assuming transfer of all the generating assets at book value at December 31, 1999). Cinergy is considering both potential structures

discussed above, as well as variations of each.

Cinergy asserts that, regardless of which particular structure is used, there should be no material increase in Cinergy's consolidated debt as a result of the restructuring. Any incremental debt at the Cinergy or EWG level would be largely offset by reduced debt at the Generating Utility level. This is because Cinergy currently owns the assets, and would merely transfer direct title of these assets from the utility to the nonutility side of Cinergy's business. Cinergy states that it and DLJ believe that the asset transfers and associated financings should not themselves have any material adverse impact on the credit ratings of Cinergy, CG&E or PSI; rather, according to Cinergy, any potential impact is a consequence of state deregulation generally and Cinergy's resulting loss of monopoly supplier status.

For the Commission by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-9276 Filed 4-13-00; 8:45 am]

BILLING CODE 8010-01-M

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24381; 812-12056]

### Pacific Asset Management LLC, et al. Notice of Application

April 7, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(f)(1)(A) of the Act.

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**SUMMARY OF APPLICATION:** The order would exempt the applicants from section 15(f)(1)(A) of the Investment Company Act of 1940 (the "Act") in connection with the proposed change in control of PIMCO Advisors L.P. ("PIMCO Advisors"). Without the requested exemption, certain investment companies advised by PIMCO Advisors or one of its subsidiary investment advisers, Oppenheimer Capital, OpCap Advisors, Parametric Portfolio Associates, and NFJ Investment Group (collectively, the "PIMCO Investment Advisers" and together with PIMCO Advisors, the "Advisers"), would have to reconstitute their respective boards of directors

("Boards") to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for the Advisers to rely upon the safe harbor provisions of section 15(f).

**APPLICANTS:** Pacific Asset Management LLC ("Pacific Asset Management"), PIMCO Advisors, PIMCO Advisors Holdings L.P. ("PAH"), PIMCO Holding LLC ("Holding LLC"), PIMCO Partners G.P. ("Partners G.P."), and PIMCO Partners LLC ("Partners LLC") (collectively, the "PIMCO Group"); The Emerging Markets Income Fund Inc. ("Emerging Markets"), The Emerging Markets Income Fund II Inc. ("Emerging Markets II"), The Emerging Markets Floating Rate Fund Inc. ("Emerging Floating Rate"), Global Partners Income Fund Inc. ("Global Partners"), Municipal Partners Fund Inc. ("Municipal Partners"), Municipal Partners Fund II Inc. ("Municipal Partners II"), the Enterprise Group of Fund, Inc. ("Enterprise Fund"), Enterprise Accumulation Trust ("Enterprise Trust"), Penn Series Funds, Inc. ("Penn Fund"). The Preferred Group of Mutual Funds ("Preferred Group"), and Consulting Group Capital Markets Funds ("CGCM") (each an "Applicant Company" and, collectively the "Applicant Companies").

**FILING DATE:** The application was filed on April 3, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief 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 2, 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.

**ADDRESS:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicants: The PIMCO Group, 800 Newport Center Drive, Suite 600, Newport Beach, California 92660; Emerging Markets, Emerging Markets II, Emerging Floating Rate, Global Partners, Municipal Partners, and Municipal Partners II, 7 World Trade Center, New York, New York 10048; Enterprise Fund and Enterprise Trust, Atlanta Financial Center, 3343 Peachtree Road, Suite 450, Atlanta, Georgia 30326; Penn Fund, 600 Dresher Road, Horsham, Pennsylvania

19044; Preferred Group, 411 Hamilton Boulevard, Suite 1200, Peoria, Illinois 61602; and CGCM, 222 Delaware Avenue, Wilmington, Delaware 19801.

**FOR FURTHER INFORMATION CONTACT:** J. Amanda Machen, Senior Counsel (202) 942-7120, or Nadya B. Roytblat, Assistant Director, (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549-0102 (tel. 202-9423-8090)

#### Applicants' Representatives

1. PIMCO Advisors, a limited partnership, is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). PAH, a publicly traded master limited partnership, and Partners G.P. are the general partners of PIMCO Advisors. Oppenheimer Capital is an indirect subsidiary of PIMCO Advisors. Parametric Portfolio Associates is a partnership of PIMCO Advisors and Parametric Management Inc. OpCap Advisors is a majority-owned subsidiary of Oppenheimer Capital. NFJ is a partnership of PIMCO Advisors and NFJ Management Inc. Each of the PIMCO Investment Advisers is registered as an investment adviser under the Advisers Act.

2. Each Applicant Company is registered under the Act as either an open-end or closed-end management investment company. The Advisers serve as either investment adviser, investment manager, or subadviser to one or more of the Applicant Companies and to LSA Variable Series Trust, registered under the Act as an open-end management investment company ("LSA Variable" and, together with Applicant Companies, the "Companies")<sup>1</sup>

3. Allianz of America, Inc. ("Allianz") is a holding company that owns several

<sup>1</sup> PIMCO Advisors serves as investment adviser to Emerging Markets, Municipal Advantage, and one portfolio of CGCM, and as investment manager to Emerging Markets II, Emerging Floating Rate, Global Partners, Municipal Partners, and Municipal Partners II. OpCap Advisors serves as fund manager to one portfolio of Enterprise Fund and one portfolio of Enterprise Trust. Parametric serves as subadviser to one portfolio of CGCM. OpCap Advisors serves as subadviser to two portfolios of Penn Fund and as subadviser to one portfolio of LSA Variable. Oppenheimer Capital serves as subadviser to one portfolio of Preferred Group. Applicants state that, in each case, each of the Advisers is acting as an investment adviser within the meaning of section 29(a)(20) of the Act under a contract subject to section 15 of the Act.

insurance and financial service companies and is, in turn, a subsidiary of Allianz AG. On October 31, 1999, PIMCO Advisors, its general partners, PAH and Partners G.P., certain of their affiliates, and Allianz entered into an Implementation and Merger Agreement (the "Merger Agreement") under which Allianz agreed to acquire majority ownership of PIMCO Advisors ("Transaction"). Following consummation of the Transaction, Allianz will hold approximately 69% of the outstanding partnership interests in PIMCO Advisors and will become the sole general partner of PIMCO Advisors. Applicants expect that the Transaction will be consummated in May 2000.

4. Consummation of the Transaction will result in a change of control of each of the Advisers within the meaning of section 2(a)(9) of the Act and, consequently, will result in an assignment of the current advisory or subadvisory contract between each of the Advisers and each respective Company (or its investment adviser, in the case of subadvisory contracts) within the meaning of section 2(a)(4) of the Act. As required by section 15(a)(4) of the Act, each contract will automatically terminate in accordance with the terms of the contract. In connection with the Transaction, the PIMCO Group has determined to seek to comply with the "safe harbor" provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, following consummation of the Transaction, more than 25 percent of the Board of each Company would be "interested persons" for purposes of section 15(f)(1)(A) of the Act.

#### Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after the sale, at least 75 percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B) defines an "interested person" of an investment adviser to include, among others, any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of the broker or dealer. Rule 2a19-1 provides an exemption from the definition of interested person for directors who are registered as

brokers or dealers, or who are affiliated persons of registered brokers or dealers, provided certain conditions are met.<sup>2</sup>

2. Upon consummation of the Transaction, each Board will consist of a majority of directors who are not interested persons of any Adviser within the meaning of section 2(a)(19)(B) ("Independent Directors"). However, each Board also will consist of two or more directors who may be considered interested persons of one of the Advisers ("Interested Directors"), for a total of twenty-seven Interested Directors in the twelve investment company complexes involved. Twenty-five of the Interested Directors may be considered interested persons of one of the Advisers within the meaning of section 2(a)(19)(B)(v) by virtue of their relationship to a registered broker-dealer. Applicants state that the exemption provided by rule 2a19-1 will not be available with respect to these Interested Directors because the broker-dealers with which they are affiliated act as distributors for the Companies in questions or may engaged in transactions with other members of a Company's complex. The remaining two director positions will be filed by two individuals who are officers or directors of PIMCO Advisers and thus, each of these directors will be an interested person of one or more of the Advisers. With exception of these two directors, none of the members of the Companies' Boards will be affiliated persons within the meaning of section 2(a)(3) of the Act of any party to the Transaction.

3. Without the requested exemption, each Company would have to reconstitute its Board to meet the 75 person non-interested director requirement of section 15(f)(1)(A). Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule regulation under 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.

4. Applicants request an exemption under section 6(c) from section 15(f)(1)(A). Applicants submit that the

addition of directors to achieve the 75 percent disinterested director ratio required by section 15(f)(1)(A) of the Act would make the Boards unduly large and unwieldy, make decisional and operational matters cumbersome, unnecessarily increase the ongoing expenses of the Companies, and would cause the Companies to incur additional expenses in connection with the selection and election of the additional directors. In addition, applicants state that shrinking the Boards by eliminating previously existing Interested Director positions would deny the Companies the valued services and insights these directors bring to their respective Boards.

5. Applicants state that although directors who are affiliated persons of broker-dealers may be viewed as interested persons of the Advisers, these directors and the broker-dealers with which they are affiliated are not affiliated persons of any party to the Transaction. Applicants assert that the requested exemption is consistent with the protection of investors. Applicants state that the Companies will continue to treat the Interested Directors as interested persons of the Companies and the Advisers for all purposes other than section 15(f)(1)(A) of the Act for so long as the directors are "interested persons" as defined in section 2(a)(19) of the Act and are not exempted from that definition by any applicable rules or order of the SEC.

6. Applicants also submit that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants assert that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on an investment company. Applicants also state that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where an investment company's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser. Applicants state that these circumstances do not exist in the present case.

#### Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

If, within three years of the completion of the Transaction, it

becomes necessary to replace any director of a Company, that director will be replaced by a director who is not an "interested person" of any Adviser within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time, after giving effect to the order granted pursuant to the application, are not interested persons of any Adviser for purposes of section 15(f) of the Act. For any Company for which an Adviser serves solely as a subadviser, this condition will not: (a) Preclude replacement with or addition of a director who is an interested person of any Adviser solely by reason of being an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of any Adviser, or (b) require replacement of a Director if a change in the director's circumstances causes him to become an interested person of an Adviser solely by reason of becoming an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of any Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 00-9274 Filed 4-13-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24382; 812-11770]

### Mercury QA Strategy Fund, Inc., et al.; Notice of Application

April 7, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 12(d)(1)(f) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

#### SUMMARY OF THE APPLICATION:

Applicants request an order to permit funds relying on section 12(d)(1)(G) of the Act to invest in certain securities and financial instruments.

**APPLICANTS:** Mercury QA Strategy Series, Inc. ("Company"), Quantitative Master Series Trust ("Master Trust"), Mercury QA Equity Series, Inc. ("Equity Series Fund"), Fund Asset Management, L.P. ("FAM").

**FILING DATES:** The application was filed on September 8, 1999. Applicants have agreed to file an amendment, the

<sup>2</sup> The rule generally provides that the exemption is available only if: (a) The broker or dealer does not execute any portfolio transactions for, engage in principal transactions with, or distribute shares for, the investment company complex, as defined in the rule, (b) the investment company's board determines that the investment company will not be adversely affected if the broker or dealer does not effect the portfolio or principal transactions or distribute shares of the investment company, and (c) no more than a minority of the investment company's directors are registered brokers or dealers or affiliated persons thereof.

substance of which is included in this notice, during the notice period.

**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 May 2, 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 may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, 800 Scudders Mill Road, Plainsboro, NJ 08536.

**FOR FURTHER INFORMATION CONTACT:** 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 from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. The Company is organized as a Maryland corporation and registered under the Act as an open-end management investment company. The Company currently offers three series: Mercury QA Strategy Growth and Income Fund, Mercury QA Strategy Long-Term Growth Fund, and Mercury QA Strategy All-Equity Fund (each a "Strategy Fund"). Mercury Asset Management US ("MAM") will be the investment adviser to each Strategy Fund and is a division of FAM, an investment adviser registered under the Investment Advisers Act of 1940. The Master Trust, a Delaware business trust registered under the Act as an open-end management investment company, consists of eight operating series advised by FAM, including the Master Aggregate Bond Index Series ("Master Bond Series"). The Equity Series Fund is an open-end management investment company organized as a Maryland corporation and registered under the Act. The Equity Series Fund currently consists of six series (each an "Equity Series") that will be advised by MAM. The Strategy Funds will initially invest

primarily in the Master Bond Series and the Equity Series.

2. Applicants seek relief so that the Strategy Funds also may invest, consistent with their investment objectives, policies, and restrictions, in other securities of any kind permissible under the Act, including, without limitation, any security within the meaning of the Act (excluding investments in shares of investment companies other than those made in reliance on section 12(d)(1)(G)), reverse repurchase agreements, financial futures and options on currencies (collectively, "Other Securities"). Applicants request that the relief apply to any existing or future open-end management investment company or its series advised by FAM or other entities controlled by, in control of, or under common control with FAM (together with the Strategy Funds, the "Upper Tier Funds") that invests in a registered open-end management investment company or its series advised by FAM or other entities controlled by, in control of, or under common control with FAM and part of the same "group of investment companies" (as defined in section 12(d)(1)(G) of the Act) as the investing Upper Tier Fund (together with the Master Bond Series and Equity Series, the "Underlying Funds").<sup>1</sup>

#### 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 such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent 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 cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company

and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trust in reliance on section 12(d)(1)(F) or (G).

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting Upper Tier Funds to invest in Underlying Funds and Other Securities as proposed would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

#### Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of directors of the Company (on behalf of each Strategy Fund) or of another Upper Tier Fund, including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charge under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. This finding, and the basis upon which it was made, will be recorded fully in the minute books of the Company (on behalf of each Strategy Fund) or other Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts each Strategy Fund or other Upper Tier Fund from investing in Other Securities as described in the application.

<sup>1</sup> All existing entities that currently intend to rely on the order are named as applicants. Any registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-9275 Filed 4-13-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42652; File No. SR-Amex-00-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to Auto-Match

April 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 6, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to enhance the Amex Order Display Book ("AODP") to automatically match and execute limit orders on the specialist's book that represent the displayed best bid or offer in select option classes. The text of the proposed rule change is available at the Amex and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Amex originally submitted the proposal on April 5, 2000, and requested that the proposal become immediately effective pursuant to Rule 19b-4(f)(5) under the Act. On April 6, 2000, the Amex submitted a letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, amending the proposal ("Amendment No. 1"). In Amendment No. 1, the Amex requested that the Commission consider and review the proposal under Rule 19b-4(f)(6). Because this proposal was filed pursuant to Section 19(b)(3)(A) of the Act, it must be complete at the time it is filed. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to enhance the AODB to automatically match and execute limit orders on the specialist's book that represent the displayed best bid or offer in select option classes. These limit orders will be automatically matched with incoming Auto-Ex eligible market or marketable limit orders and then automatically executed at the limit order's displayed best bid or offer. This will provide for a faster, more efficient execution of market and marketable limit orders, as well as more efficient handling of limit orders on the specialist's book. The AODB enhancement initially will be used in selected less-active option classes.

The AODP is an electronic specialist's book that provides for the handling of options orders and the executing and reporting of options transactions. The AODB handles both market and limit orders routed to the specialist through the Amex Order File ("AOF"). Limit orders that better the current displayed bid or offer become the Amex's displayed best bid or offer and market orders to buy or sell are executed at these prices. When a limit order represents the displayed best bid or offer, market and marketable limit orders sent through AOF to Auto-Ex for execution at the displayed bid or offer by-pass Auto-Ex and are sent directly to the AODB for handling and execution by the specialist with the limit order as contra-party to the trade. The Auto-Ex system is bypassed in these situations to prevent the specialist and any registered options traders signed on Auto-Ex from trading ahead of customer limit orders on the specialist's book in violation of Amex Rule 950.

The Exchange now proposes to enhance the AODB so that market and marketable limit orders that have

bypassed Auto-Ex for handling by the specialist will instead be automatically matched with the customer limit order representing the best bid or offer displayed on the AODB and automatically executed in the AODB. This enhancement initially will be used only in selected less-active option classes. Once experience is gained using this feature and the further enhancements discussed below are implemented, the staff, in consultation with the membership, will review the program and determine whether to expand it to other option classes.

It should also be noted that orders eligible for Auto-Ex execution are limited in size.<sup>4</sup> Therefore, if the limit order on the AODB is greater in size than the Auto-Ex eligible order, the limit order will be partially executed for the size of the Auto-Ex order and the remainder will be displayed on the AODB until it is canceled, replaced by a more competitive bid or offer, or completely executed. If the limit order on the AODB is smaller in size than the Auto-Ex eligible order, the limit order will be executed in full and the remaining contracts from the Auto-Ex order will be bought or sold by the specialist. For example, a limit order to buy 10 contracts represents the best bid in an option class whose Auto-Ex eligible size is 20 contracts and a market order of 20 contracts to sell is routed to the AODB. Under the proposal, 10 contracts will be matched and executed against the limit order and the remaining 10 contracts will be executed by the specialist. A further enhancement to AODB, expected by the end of the third quarter of 2000, will allow the excess portion of the Auto-Ex eligible order to be allocated to the specialist and any registered options traders participating in the crowd for that option class. Until this further enhancement is put in place, the automatic execution feature for AODB will only be used in those option classes that have no trading crowd and no participating registered options traders.

This will provide for a faster, more efficient execution of market and marketable limit orders as well as more efficient handling of limit orders on the specialist's book. More importantly, it will also assure that limit orders on the specialist's book retain priority, where appropriate, over other interest on the

<sup>4</sup> The current size parameters for Auto-Ex eligible order are 50, 20 and 10 contracts. Of the approximately 1256 options classes currently traded on Amex: 206 or 16.4% allow orders for 50 contracts to be automatically executed at the best bid or offer; 941 or 74.9% of option classes allow orders for 20 contracts, and 109 or 8.7% of option classes allow orders for 10 contracts.

Exchange. Thus, the proposed rule change will benefit customers using the Auto-Ex system, as well as those customers whose orders are on the AODB.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup> Although Rule 19b-4(f)(6) requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Amex's request.

The Commission also notes that under Rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The

Amex requested a waiver of this 30 day period to permit the immediate integration of the proposed systems change into the Exchange's trading systems. Amex believes that this systems change will provide faster and more efficient executions to market and marketable limit orders, and promote more efficient handling of limit orders on the specialist's book. Amex also believes that the proposed change will assure that limit orders on the specialist's book retain priority, where appropriate, over other interest on the Exchange. For the reasons discussed above, the Commission finds that the waiver of the 30 day period is consistent with the protection of investors and the public interest.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-00-17 and should be submitted by May 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-9325 Filed 4-13-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42653; File No. SR-CHX-99-20]

### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Minimum Net Capital and Excess Net Capital Requirements for Members

April 7, 2000.

#### I. Introduction

On September 24, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, a proposed rule change. In its proposal, CHX seeks to modify its minimum net capital and excess net capital requirements for members who are specialists or who carry the accounts of specialist. The proposed rule change was published for comment in the *Federal Register* on December 22, 1999.<sup>3</sup> The Commission received no comments on the filing. This order approves the proposal.

#### II. Description of the Proposal

The Exchange proposes to amend Article XI, Rule 3 of the Exchange's rules to modify the minimum net capital and excess net capital requirements applicable to members who are specialists or who carry accounts of specialists. CHX is amending its rules because it and the Midwest Clearing Corporation ("MCC") have determined to discontinue the sponsored account program on June 30, 2000, after which time the MCC will be dissolved and the Exchange will no longer guarantee the MCC's obligations to qualified clearing agencies.<sup>4</sup>

Currently, the rules of the Exchange and the MCC permit floor members for

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 42239 (December 15, 1999), 64 FR 71835.

<sup>4</sup> "Qualified clearing agencies" is a defined term in the Midwest Clearing Corporation ("MCC") Rules. See MCC Rules, Art. XI, Rule 1.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> The Commission notes that this proposal is similar to a Chicago Board Options Exchange, Inc. proposal that the Commission approved in 1999. See Release No. 34-41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (File No. SR-CBOE-99-29).

the Exchange to establish "sponsored accounts" pursuant to which the MCC provides sponsored participants with access to clearance, settlement and delivery via a qualified clearing agency such as the National Securities Clearing Corporation ("NSCC"). The Exchange in turn provides a guaranty to the NSCC (and through the NSCC to The Depository Trust Company ("DTC")) from time to time to guarantee the obligations of the MCC with respect to liabilities that could be generated in sponsored accounts.<sup>5</sup> As stated above, the Exchange and the MCC have decided to discontinue the sponsored account program on June 30, 2000.

Because of this change, all current sponsored participants will have to become direct participants in qualified clearing agencies such as NSCC and DTC. The Exchange therefore proposes to amend Article XI, Rule 3 to incorporate the minimum net capital and excess net capital requirements currently required for direct participation in NSCC, subject to the amended phase-in periods set forth in Interpretation and Policy .01 to the amended rule. The Exchange anticipates that the proposed phase-in periods will ameliorate any financial burden that might otherwise be placed on members who are specialists or who carry accounts of specialists.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act.<sup>6</sup> In particular, the Commission finds the proposal is consistent with Section 6(b)(5)<sup>7</sup> of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act and rules thereunder because the CHX is amending its rules to require net capital and excess net capital levels that are consistent with its current business plan, in light of CHX and MCC's decision to discontinue the sponsored account program. Because of this change in business plans, sponsored participants now need to become direct participants in clearing agencies such as NSCC and DTC. The proposed rule change allows for this change by making certain the CHX's net capital

requirements for specialists and members who carry the accounts of specialists are consistent with those of NSCC. Further, CHX has given these members advance notice of the change and has provided for a reasonable phase-in period to prepare these members for the change.

### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CHX-99-20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-9327 Filed 4-13-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42658; File No. SR-MSRB-00-03]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to Underwriting and Transaction Assessments Imposed by the Municipal Securities Rulemaking Board Pursuant to Rule A-13

April 10, 2000.

#### I. Introduction

On February 7, 2000, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> submitted to the Securities and Exchange Commission ("Commission") a proposed rule change revising Rule A-13, Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers. The proposed rule change was published for comment in the **Federal Register** on March 10, 2000.<sup>3</sup> No comments were received on the proposal. This order approves the proposal.

#### II. Description of the Proposal

##### A. Current Fee Structure

Rule A-13(c) currently provides for a fee levied by the MSRB based on the

total par value of a dealer's inter-dealer sales in municipal securities.<sup>4</sup> Dealers report these transactions by submitting transaction information to the automated comparison system operated by the National Securities Clearing Corporation. The inter-dealer transaction fee assessment has been set at \$.005 per \$1,000 par value of sales since it was instituted in 1996.

The MSRB levies three other types of fees that generally apply to dealers. Rule A-12 requires each dealer to pay a \$100 initial fee when it enters the municipal securities business. Rule A-14 requires each dealer that conducts municipal securities business during the year to pay an annual fee of \$200. Rule A-13 requires each dealer to pay an assessment on underwriting activity based on the par value of the dealer's purchases from the issuer of primary offerings of municipal securities.

##### B. Proposed Fee Structure

The MSRB is proposing to expand the transaction-based fee to take into account the dealer's sales to customers in addition to sales to dealers. The MSRB proposes to use a rate of \$.005 per \$1,000 par value to calculate assessments for both inter-dealer and customer transactions. The MSRB would exclude from the calculation of both inter-dealer and customer transaction-based fees certain transactions in very short-term instruments (*i.e.*, securities that have a final stated maturity of nine months or less and securities that may be put to the issuer at least as frequently as every nine months).<sup>5</sup> Transactions on these instruments are not excluded from the inter-dealer transaction-based fee, but would be excluded from that fee under the MSRB's proposal.

Under the proposed rule change, the MSRB would assess transaction fees on a monthly basis, based on transactions that dealers report to the MSRB's Transaction Reporting System, which supports market surveillance and price transparency functions for the municipal securities market. Dealer sales to customers (not purchases by the dealer from customers) would be used as the measure of transaction activity to avoid double counting when a dealer buys and sells a block of securities in the customer market.<sup>6</sup>

<sup>4</sup> The total par value of sales transactions will be referred to hereafter as "transaction activity."

<sup>5</sup> The excluded categories of short-term issues are referred to hereafter as "municipal commercial paper," "short-term notes," and "variable rate demand obligations."

<sup>6</sup> Similarly, the current inter-dealer transaction fee is assessed to the dealer on the "sell side" of each trade.

<sup>5</sup> See CHX Rules, Art. XXI, Rule 14.

<sup>6</sup> In reviewing the proposal, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

See Exchange Act Release No. 42492 (March 2, 2000), 65 FR 48 (March 10, 2000).

The proposed is intended to increase revenue to the MSRB to cover budgetary expenditures. The MSRB contends that it is facing a projected shortfall in revenue caused by declining underwriting assessments and increases in projected expenses. According to the MSRB, during the past five years, increased regulatory activities and expanded operation of the Municipal Securities Information Library ("MSIL") system have increased its expenses from \$6,716,681 in FY 1994 to \$9,849,701 in FY 1999. The MSRB reported that much of the expenses during this time resulted from development and operation of its Transaction Reporting System.<sup>7</sup> In addition, according to the MSRB, its long-range plans call for increased involvement in activities to improve disclosure, which may entail substantial modification or enhancement of the Board's computer systems, thus requiring increased revenue.

### III. Discussion

The Commission must approve a proposed MSRB rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the MSRB.<sup>8</sup> The Commission finds that the proposal meets the above standard. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(J) of the Act,<sup>9</sup> which requires, in pertinent part, that the MSRB's rules shall "provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board."

The Commission believes that the proposal will help to provide sufficient

revenues to fund Board operations and to allocate fees among brokers, dealer, and municipal securities dealers in a manner that more accurately reflects each dealer's participation in the municipal securities market. The Commission believes that the MSRB's fees should be based, to the extent possible, on a comprehensive measurement of participation in the municipal market. The Commission further believes that it is appropriate for the MSRB to change the scope of the rules governing fees based on changes in dealer participation in the market. The Commission also believes that the increased revenue will help to ensure that the MSRB continues to provide increased disclosure in the municipal securities market.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the MSRB and, in particular, Sections 15B(b)(2)(J).<sup>10</sup>

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act<sup>11</sup> that the proposed rule change (SR-MSRB-00-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-9326 Filed 4-13-00; 8:45 am]

**BILLING CODE 8010-01-M**

### SMALL BUSINESS ADMINISTRATION

#### [Declaration of Economic Injury Disaster #9H05]

#### State of Washington

King County and the contiguous counties of Chelan, Kittitas, Pierce, Snohomish, and Yakima in the State of Washington constitute an economic injury disaster area as a result of the civil disturbance in the City of Seattle during the World Trade Organization Conference from November 29 to December 4, 1999. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on

<sup>10</sup>In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup>15 U.S.C. 78s(b)(2).

<sup>12</sup>17 CFR 200.30-3(a)(12)

January 8, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: April 7, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00-9329 Filed 4-13-00; 8:45 am]

**BILLING CODE 8025-01-U**

### SMALL BUSINESS ADMINISTRATION

#### Small Business Investment Company Computation of Alternative Maximum Annual Cost of Money to Small Businesses

13 CFR 107.855 limits the maximum annual Cost of Money (as defined in 13 CFR 107.50) that may be imposed upon a Small Business in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined in 13 CFR 107.50 as the interest rate, as published from time to time in the **Federal Register** by SBA, for ten year debentures issued by Licensees and funded through public sales of certificates bearing SBA's guarantee.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate, plus the 1 percent annual fee which is added to this Rate to determine a base rate for computation of maximum Cost of Money, is 8.64 percent per annum.

13 CFR 107.855 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act of 1958, as amended, regarding that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: April 7, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00-9328 Filed 4-13-00; 8:45 am]

**BILLING CODE 8025-01-U**

<sup>7</sup>The MRSB reported that MSIL expenditures during the past five fiscal year totaled \$16.5 million, more than half of which is for its Transaction Reporting System development and operations. The MSRB has enhanced the Transaction Reporting System to disseminate more information in the transparency reports and to increase the information provided in a surveillance database to support enforcement of Board rules. Annual subscriptions to the transparency reports are available for a fee of \$15,000, which the MSRB stated has resulted in revenue that less than offsets the marginal cost of production. In January 2000, the MSRB began making available detailed transaction reports and determined that, in order to foster the broadest possible dissemination of price information, the new reports will be made available free of charge. See Exchange Act Release No. 41916 (Sept. 27, 1999) 64 FR 53759 (Oct. 4, 1999).

<sup>8</sup>15 U.S.C. 78s(b). The Commission's statutory role is limited to evaluating rules as proposed against the statutory standards. See S. Rep. No. 75, 94th Cong., 1st Sess., at 13 (1975).

<sup>9</sup>15 U.S.C. 78o-4(b)(2)(J).

**SOCIAL SECURITY ADMINISTRATION****Statement of Organization, Functions and Delegations of Authority: Correction**

**AGENCY:** Social Security Administration.  
**ACTION:** Correction notice.

**SUMMARY:** This notice corrects the notice: Social Security Administration—Statement of Organization, Functions and Delegations of Authority, published in the **Federal Register** on February 29, 2000 (65 FR 10846).

**SUPPLEMENTARY INFORMATION:** In the notice document 00-4755, which appeared on pages 10846 and 10847 in the issue of Tuesday, February 29, 2000, we show an incorrect SAC for the Office of Legislative Relations in the Office of the Deputy Commissioner, Legislation and Congressional Affairs (ODCLCA). This correction notice corrects that mistake. Make the correction as follows:

On page 10846, in the third column, item E, change the SAC in parentheses from TBH to TBK.

On page 10847, in the first column, item E change the SAC in parentheses from TBH to TBK.

Dated: April 7, 2000.

**Lewis H. Kaiser,**

*Director, Center for Classification and Organization Management.*

[FR Doc. 00-9324 Filed 4-13-00; 8:45 am]

**BILLING CODE 4191-02-U**

**SOCIAL SECURITY ADMINISTRATION****Rescission of Social Security Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11)**

**AGENCY:** Social Security Administration.  
**ACTION:** Notice of rescission of Social Security Acquiescence Rulings 93-3(6)—*Akers v. Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992); 93-4(2)—*Condon and Brodner v. Bowen*, 853 F.2d 66 (2d Cir. 1988); 93-5(11)—*Shoemaker v. Bowen*, 853 F.2d 858 (11th Cir. 1988)

**SUMMARY:** In accordance with 20 CFR 404.985(e), 416.1485(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11).

**EFFECTIVE DATE:** April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

**SUPPLEMENTARY INFORMATION:** A Social Security Acquiescence Ruling explains

how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(3) and 416.1485(e)(3), a Social Security Acquiescence Ruling may be rescinded as obsolete if a Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling.

On July 29, 1993, we issued Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11) to reflect the holdings in *Akers v. Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992), *Condon and Brodner v. Bowen*, 853 F.2d 66 (2d Cir. 1988), and *Shoemaker v. Bowen*, 853 F.2d 858 (11th Cir. 1988), that continued benefits and "interim benefits" paid to claimants pursuant to section 2(e) of the Social Security Disability Benefits Reform Act of 1984 or section 223(g) of the Social Security Act (the Act) are "past-due benefits" for purposes of awarding attorney fees under section 206(b)(1) of the Act.

On August 15, 1994, the Social Security Independence and Program Improvements Act of 1994<sup>1</sup> was enacted which specifically provided in its technical and clerical amendments in title III, section 321(f)(3)(B) that the term "past-due benefits" excludes benefits continued under section 223(g) or (h) of the Act. The effective date of this amendment was 180 days later.

Because the change in law did not adopt the *Akers*, *Condon and Brodner*, and *Shoemaker* courts' holdings and specifically excluded continued benefits from the definition of "past-due benefits," we are rescinding Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

<sup>1</sup> Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

Dated: March 17, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

[FR Doc. 00-9323 Filed 4-13-00; 8:45 am]

**BILLING CODE 4191-02-F**

**DEPARTMENT OF STATE**

[Public Notice 3285]

**Bureau of Nonproliferation; Determination Under the Arms Export Control Act**

**AGENCY:** Department of State.

**ACTION:** Notice.

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Secretary of State has made a determination pursuant to Section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: April 7, 2000.

**Robert J. Einhorn,**

*Assistant Secretary of State for Nonproliferation, Department of State.*

[FR Doc. 00-9348 Filed 4-13-00; 8:45 am]

**BILLING CODE 4710-25-U**

**DEPARTMENT OF STATE**

[Public Notice 3286]

**Bureau of Nonproliferation, Imposition of Missile Proliferation Sanctions Against Entities in North Korea and Iran**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The United States Government has determined that entities in North Korea and Iran have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 12924 of August 19, 1994).

**EFFECTIVE DATE:** April 6, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202-647-1142).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), section 11B(b)(1) of the Export

Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 12924 of August 19, 1994 (hereinafter cited as the "Export Administration Act of 1979"), and Executive Order 12851 of June 11, 1993, the United States Government determined on April 6, 2000, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in sections 73(a)(2)(B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and (C)) and sections 11B(b)(1)(B)(ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii) and (iii)) on these entities:

1. Changgwang Sinyong Corporation (North Korea) and its sub-units, successors, and affiliated companies;
2. The Ministry of Defense and Armed Forces Logistics (MODAFL) (Iran) and its sub-units and successors;
3. Aerospace Industries Organization (AIO) (Iran) and its sub-units and successors;
4. Shahid Hemmat Industrial Group (SHIG) (Iran) and its sub-units and successors; and
5. SANAM Industrial Group (Iran) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on these entities:

(A) New individual licenses for exports to the entities described above of items controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(C) No new United States Government contracts involving the entities described above will be entered into for two years; and

(D) No products produced by the entities described above will be imported into the United States for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

Additionally, because North Korea is a country with a non-market economy that is not a former member of the Warsaw Pact (as referenced in the definition of "person" in section 74(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(8)(B)), the following sanctions shall be applied to all activities of the North Korean government relating to the development or production of missile equipment or

technology and to all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New licenses for export to the government activities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(B) No new U.S. Government contracts involving the government activities described above will be entered into for two years; and

(C) No products produced by the government activities described above will be imported into the United States for two years.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: April 7, 2000.

**Robert J. Einhorn,**

*Assistant Secretary of State for Nonproliferation, Department of State.*

[FR Doc. 00-9349 Filed 4-13-00; 8:45 am]

**BILLING CODE 4710-25-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Notice of a Proposed Wetland Banking Memorandum of Agreement in the Commonwealth of Pennsylvania

**COORDINATING AGENCIES:** Federal Highway Administration, Pennsylvania Division (federal); U.S. Army Corps of Engineers Baltimore, Philadelphia, and Pittsburgh Districts (federal); U. S. Environmental Protection Agency, Region III (federal); U.S. Fish and Wildlife Service (federal); U.S. Department of Agriculture, Natural Resource Conservation Service (federal); Pennsylvania Department of Transportation (state); Pennsylvania Department of Environmental Protection (state); Pennsylvania Game Commission (state); Pennsylvania Fish and Boat Commission (state).

**ACTION:** Notice.

**SUMMARY:** The purpose of this proposed wetland banking agreement is to establish a wetland banking system to provide effective advanced compensatory mitigation for unavoidable, minimized impacts to wetlands of the United States and the Commonwealth of Pennsylvania

resulting from transportation construction or maintenance activities. The document will serve as an umbrella banking instrument for developing site specific subordinate instruments.

**COMMENTS:** Comments must bear postmarks dated no later than May 15, 2000.

**ADDRESSES:** Address comments to either the Pennsylvania Department of Transportation, Bureau of Environmental Quality, 555 Walnut Street— 7th Floor, Harrisburg, Pennsylvania 17101-1900 (Attn: Ms. Susan McDonald) or the Baltimore District Corps of Engineers, Regulatory Branch, P.O. 1715, Baltimore, Maryland 21203-1715 (Attn: Mr. Paul Wettlaufer) or Federal Highway Administration, Pennsylvania Division, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101-1720 (Attn: Mr. Daniel W. Johnson).

**FOR FURTHER INFORMATION CONTACT:** Susan McDonald, Acting Division Chief, Pennsylvania Department of Transportation, Bureau of Environmental Quality, Environmental Analysis Division (717-772-3083).

#### SUPPLEMENTARY INFORMATION:

##### Draft Memorandum of Agreement

between Commonwealth of Pennsylvania, Department of Transportation (PennDOT) and Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) and Commonwealth of Pennsylvania, Fish and Boat Commission (PAFBC) and Commonwealth of Pennsylvania, Game Commission (PGC) and U.S. Army Corps of Engineers, North Atlantic Division and U.S. Army Corps of Engineers, Ohio Division and U.S. Environmental Protection Agency, Region III (EPA) and U.S. Fish and Wildlife Service, Pennsylvania Field Office (USFWS) and Natural Resource Conservation Service, Pennsylvania State Office (NRCS) and Federal Highway Administration, Pennsylvania Division (FHWA)

##### For the purposes of **Establishing a Statewide Umbrella Wetland Banking Instrument**

This Memorandum is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, between the above listed parties.

*Whereas*, Sections 501 and 502 of the Administrative Code of 1929, as amended, 71 P.S. §§ 181-182 require the Commonwealth Departments and agencies to cooperate with one another and coordinate their work; and,

*Whereas*, Section 2002(a)(7) of the Pennsylvania Administrative Code of

1929, as amended, 71 P.S. § 512(a)(7), requires The Pennsylvania Department of Transportation to cooperate with appropriate Federal agencies in the coordination of plans and policies in the development of transportation facilities; and,

*Whereas*, The Pennsylvania Department of Transportation, in pursuit of its mission to provide an improved transportation system for the citizens of the Commonwealth of Pennsylvania, is required to consider the impacts of its projects on wetlands pursuant to the National Environmental Policy Act of 1969 42 U.S.C. 4321 *et seq.* and the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, as amended; and,

*Whereas*, the federal government has set forth guidance for the Establishment, Use and Operation of Mitigation Banks at 60 FR 58605, 1995.

*Now, therefore*, these parties set forth the following as terms and conditions of this agreement:

## I. Introduction

### A. Purpose

The purpose of this wetland banking agreement (Agreement) is to establish a wetland banking system to provide effective compensatory mitigation for unavoidable, minimized impacts to wetlands of the United States and the Commonwealth resulting from transportation construction or maintenance activities. This document serves as an umbrella banking instrument for developing site specific subordinate instruments. Site specific development plans will be appended to this banking instrument as they are developed. Wetland compensatory mitigation is appropriate only after it has been demonstrated to the satisfaction of the permitting agencies that there is no practicable alternative to construction in a wetland and that all practicable measures to avoid and minimize impacts to wetlands have been incorporated into the project.

(1) When minimized project impacts total one acre or less, wetland bank debiting is appropriate when it has been demonstrated to the satisfaction of the permitting agencies that:

(a) On-site mitigation is not practicable or

(b) Compensation through wetland bank debiting is of greater environmental benefit than on-site mitigation.

(2) When minimized project impacts total over one acre, wetland bank debiting is appropriate compensatory mitigation when it has been demonstrated to the satisfaction of the permitting agencies that:

(a) On-site mitigation is not practicable, and

(b) Other off-site mitigation is not practicable, or

(c) Compensation through wetland bank debiting is of greater environmental benefit than either on-site mitigation or other off-site mitigation.

### B. Goal

The goal of the wetland banking system put forth in this Agreement is to provide an efficient and effective means to replace wetland functions and values in advance of their loss or alteration by the authorized construction or maintenance of transportation facilities. Wetland banks should be designed to ensure the maintenance, restoration, and, when feasible, improvement of the physical, chemical, and biological integrity of wetlands.

### C. Authority

This agreement is established in consideration of the following federal and state laws, regulations, policies, and guidance:

#### Federal:

Clean Water Act (33 USC 1251 *et seq.*)  
Rivers and Harbors Act of 1899 (33 U.S.C. 403)

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

Executive Order 11990—Protection of Wetlands

Regulatory Programs of the Corps of Engineers (33 CFR Parts 320 through 330)

Section 404 (b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 320)

Memorandum of Agreement between the EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act, Section 404(b)(1) Guidelines, February 6, 1990

Department of Transportation Order 5660.1A—Preservation of the Nation's Wetlands

Mitigation of Environmental Impacts to Privately Owned Wetlands (23 CFR 777)

Fish and Wildlife Coordination Act (16 U.S.C. 661)

U.S. Fish and Wildlife Service Mitigation Policy (46 FR 7644, 1981)

Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Magnuson Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.*)

National Marine Fisheries Habitat Conservation Policy (48 FR 53142,

1983)

Transportation Equity Act for the 21st Century (codification pending)  
Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*)

Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 FR 58605, 1995)

#### State:

Constitution of the Commonwealth of Pennsylvania, Section 27, Article 1  
Pennsylvania Act 120 of 1970  
Dam Safety and Encroachments Act (32 P.S. §§ 693.5 *et seq.*)

Pennsylvania Clean Streams Law (35 P.S. §§ 691.5 *et seq.*)

25 Pa. Code Chapter 82—

Conservation of Pennsylvania Native Wild Plants

25 Pa. Code Chapter 93—Water Quality Standards

25 Pa. Code Chapter 105—Dam Safety and Waterway Management

Pa. Title 30—The Fish and Boat Code

Pa. Title 34—The Game and Wildlife Code

Pennsylvania State Water Plan

### D. Benefits

The advantages of mitigation banking include, but are not limited to:

Compensatory mitigation efforts are in place and functioning prior to impacts, thereby reducing the temporal loss of functions and ensuring successful replacement.

Mitigation banks can be monitored and maintained with greater ease than numerous small mitigation sites.

Mitigation banking can improve agency coordination in mitigation planning.

Mitigation banking can reduce permit preparation and evaluation time for qualifying projects.

Mitigation banks may be more resilient to natural environmental cycles and may provide increased ecological benefit in comparison to numerous small mitigation sites of equal area.

Mitigation banking can result in decreased cost and increased application of sound wetland science in design and construction.

### E. Definitions

*Permitting Agencies*—Any federal or state agency empowered by regulation to authorize the particular use of a mitigation bank as compensation for a permitted activity. As it pertains to this agreement the permitting agencies are specifically the U.S. Army Corps of Engineers (Philadelphia, Baltimore, and Pittsburgh Districts) and the Pennsylvania Department of Environmental Protection.

*Bank Sponsor*—An organization within the Pennsylvania Department of

Transportation (such as an Engineering District) assigned the responsibility for the establishment and operation of a mitigation bank in a given service area.

**Consensus**—A process by which a group synthesizes its concerns and ideas to form a common collaborative agreement acceptable to all members. While the primary goal of consensus is to reach an agreement on an issue by all parties, unanimity may not always be possible.

**Creation**—The establishment of a wetland where one did not formerly exist.

**Credit**—A unit of measure representing the accrual or attainment of wetland functions at a mitigation bank.

**Debit**—A unit of measure representing the loss of wetland functions at an impact or project site.

**Development Plan**—A site specific plan prepared for each mitigation bank site which details the particulars of bank establishment and operation.

**Enhancement**—Activities conducted in existing wetlands that increase one or more wetland functions.

**Environmental Clearance**

**Documentation**—Documentation prepared with the purpose of compliance with the National Environmental Policy Act and/or Pennsylvania Act 120 of 1970. Such documentation is reviewed and approved by the Federal Highway Administration and/or the Pennsylvania Department of Transportation.

**In-kind replacement**—Compensation that provides essentially the same set of interrelated wetland functions as those lost at the impacted wetlands. This is typically established through classification of wetland type.

**Mitigation Bank**—A site where wetlands have been restored, created, enhanced, or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to wetlands.

**Mitigation Bank Criteria**—Site specific parameters under which a bank is operated. These parameters form site specific portions of this wetland banking instrument and will be appended hereto as sites are developed. These criteria include the approved Development Plan, monitoring reports, transaction reports, mitigation bank site accounting, and other such documentation as may affect banking operations.

**Mitigation Banking Review Team (MBRT)**—A group consisting of one representative from each of the following agencies (which are signatory to this agreement) that oversees the

establishment, use and operation of banks established under this agreement:

The appropriate U.S. Army Corps of Engineers District (co-chair)  
Philadelphia District (Phil. Corps)  
Baltimore District (Balt. Corps)  
Pittsburgh District (Pbgh. Corps)  
U.S. Environmental Protection Agency (EPA)  
Natural Resource Conservation Service (NRCS)  
U.S. Fish and Wildlife Service (USFWS)  
Federal Highway Administration (FHWA)  
The Pennsylvania Department of Environmental Protection (DEP) (co-chair)  
Pennsylvania Fish & Boat Commission (PAFBC)  
Pennsylvania Game Commission (PGC)  
Pennsylvania Department of Transportation, Bureau of Environmental Quality (BEQ)

**On-site replacement**—Wetland creation, restoration, enhancement or preservation to compensate for impacts within the same watershed (defined by United States Geological Survey's twelve-digit Hydrologic Unit Code) as such impacts occur.

**Out-of-kind replacement**—Compensation which is not in-kind replacement.

**Participant**—An entity obtaining credits from a wetland bank to compensate for authorized impacts resulting from that entity's activities. Specifically in this agreement, approved Participants are limited to the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission. Other state agencies, county or municipal governments, transit authorities, ports, airports and others may be deemed appropriate participants by decision of both the Bank Sponsor and the Permitting Agencies on a case by case basis when such entities impact wetlands directly as a result of delivering transportation infrastructure or services.

**Practicable**—Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Preservation**—The protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation will only be considered appropriate compensatory mitigation in exceptional circumstances.

**Restoration**—Re-establishment of previously existing wetland characteristics and functions at a site where they have ceased to exist.

**Service Area**—A set geographic region, based on watershed and ecoregion concepts, wherein a bank can reasonably be expected to provide appropriate compensation for impacted wetlands within which a mitigation bank's debits and credits can be exchanged. Specifically, within this agreement these areas are based on Pennsylvania State Water Plan subwatersheds that have been correlated to approximate ecosystem boundaries. See also the Map of Service Areas, Appendix A.

**Wetland Functions**—Natural processes of wetlands that include but are not limited to:

Supporting the food chain,  
Meeting the general habitat needs of nesting, spawning, rearing and resting sites for aquatic and terrestrial species,  
Providing areas for the study of the environment,  
Providing environmental sanctuary or refuge,  
Maintaining natural drainage characteristics including sedimentation patterns, salinity distribution, flushing characteristics, and natural water filtration,  
Shielding other areas from wave action, erosion, or storm damage,  
Serving as a storage area for storm and flood waters,  
Providing groundwater discharge that supports minimum baseflows,  
Serving as a recharge area where surface water and groundwater are directly interconnected,  
Preventing or reducing pollution impacts (e.g. toxicant retention, nutrient transformation),  
Providing recreation

**Wetland Type**—The characterization and categorization of a wetland according to an accepted classification system (i.e. Cowardin, HGM or other system as deemed appropriate).

**Wetlands**—Those areas that are inundated or saturated by surface or groundwater at frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

## II. Duties and Responsibilities of Signatories and Participants

### A. Duties and Responsibilities of the Bank Sponsor

The bank sponsor will:

1. Establish the mitigation bank in accordance with Article III below.
2. Operate the mitigation bank in accordance with Articles IV and V below.

### *B. Duties and Responsibilities of the MBRT*

The MBRT oversees bank development and crediting. All decisions made by the MBRT with respect to mitigation bank establishment and operation, as outlined in this agreement, shall be reached by consensus except as provided for in Article II Section D.1. below. In exercising this authority, the MBRT will:

1. Field view each potential mitigation banking site and recommend development of such sites as are appropriate and practicable.
2. Review, provide comments, and as appropriate, approve bank development plans.
3. Establish available credits for mitigation banks in accordance with Section IV.A.6. below.
4. Advise the Sponsor and Permitting Agencies on maintenance and remediation activities.

### *C. Duties and Responsibilities of the Mitigation Banking Participant*

The Mitigation Bank Participant is responsible to the Permitting Agencies and must:

1. Comply with applicable regulatory processes.
2. Demonstrate that use of the bank is practicable and appropriate.
3. Arrange and document the exchange of credits with the Sponsor to the satisfaction of the Permitting Agencies.
4. Participants with known project programs are strongly encouraged to annually consult with the Permitting Agencies by providing a list of projects that the participant anticipates may qualify for use of a mitigation bank.

### *D. Duties and Responsibilities of Permitting Agencies*

1. As permitting agencies for wetlands, these agencies will co-chair the MBRT. These co-chair agencies will have the final determination on any banking issue with respect to their particular regulatory programs in the event that the MBRT cannot reach consensus.
2. As permitting agencies for wetlands the Permitting Agencies have sole authority over the transfer of credits, notwithstanding any other decision-making requirements bearing upon them by law or regulation. As such they will:
  - a. Determine if and when the transfer of credits from a bank is appropriate and practicable for compensatory mitigation.
  - b. Ensure that in the interest of achieving functional replacement, in-kind compensation of aquatic resource

impacts should generally be required. Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (e.g. of greater ecological value to a particular region).

c. Establish, on a case by case basis, the number of bank credits necessary for appropriate compensatory mitigation, within a framework that includes areal extent, landscape position, and ecological function.

d. Ensure that a Participant has effected a proper exchange of credits.

e. Ensure compliance with the Mitigation Banking Criteria.

3. Approve transfers of legal interests in closed wetland banks as appropriate.

### **III. Procedures for Establishing a Wetland Mitigation Bank**

The Bank Sponsor will take the following steps in developing a mitigation bank. The development effort should occur in conjunction with an appropriate public and agency coordination process that is initiated early and is continuous in nature.

A. Identify sites within a service area with the potential for the development of a mitigation bank. Location of anticipated transportation program projects should be considered in locating such sites. When a watershed assessment has been conducted for a service area or a portion thereof, the sponsor should also give consideration to the recommendations therein.

B. Schedule and conduct a field view to assist the MBRT in their review and approval of a site for mitigation bank development. The field view should include dissemination and discussion of appropriate background material concerning the potential bank site. Appropriate background material may include such data as a project location map, aerial photography, soil survey data, site soil data, preliminary site hydrology and rudimentary concepts of potential compensatory mitigation options for the site.

C. Prepare a draft Development Plan. The plan will contain, at a minimum, the following information:

1. The geographic location of the mitigation bank site.
2. Identification of the applicable service area and anticipated need for wetland banking.
3. Description of existing site conditions including:
  - a. A wetland delineation and jurisdictional determination where appropriate
  - b. Cultural Resource Issue Identification
  - c. Threatened and Endangered Species Issue Identification

- d. Soils data
- e. Hydrologic data
- f. Natural communities
- g. Land Use and Land Cover

4. Draft Environmental Clearance Documentation.

5. Conceptual Mitigation Design including proposed future conditions.

6. Proposed method of securing legal interest.

D. Conduct an appropriate public involvement effort that, at a minimum, consists of a public notice publication.

E. Submit the Draft Development Plan and the results of the public involvement effort to the MBRT for review and approval.

F. Gain approval of Environmental Clearance Documentation for mitigation bank development from FHWA and PennDOT Central Office.

G. Secure legal interest in the site sufficient to protect the site in perpetuity. Such legal interest may be either in the form of fee-simple interest or a permanent conservation easement.

H. Conduct final site design as necessary.

I. Prepare and submit to the MBRT for review and approval the final Development Plan. In addition to including all data in the draft Development Plan it should include:

1. Project goals and objectives including anticipated benefits to the service area,
2. Plans, specifications and estimates for construction including excavation, grading, hydrologic alteration, soil and planting issues as appropriate,
3. Proposed maintenance program,
4. Proposed monitoring protocol,
5. Anticipated final credit accrual,
6. Any site specific accounting procedures,
7. A closure plan, and
8. Any refinements to the data presented in the draft Development Plan

J. Obtain all needed contracts and permits.

K. Ensure that an individual technically competent in the construction of compensatory mitigation sites is present during construction.

L. Construct the site.

M. Submit as-built plans including vegetative plantings to the MBRT.

### **IV. Procedures for the Administrative Operation of a Mitigation Bank**

#### *A. Establishment of Credits and Timing of Withdrawals*

1. Establishment of credits at a wetland bank will be based on the use of an appropriate functional assessment methodology as adopted in the Development Plan. If an appropriate functional assessment methodology is

impracticable to employ, acreage may be used as a surrogate for measuring function for the determination of credits.

2. When using a functional assessment methodology to establish credits, credits will be based on the net functional increase over baseline conditions and the area over which such increase has occurred at the time of debiting.

3. When using acreage and classification as the basis for establishing credits, credits resulting from wetland restoration or creation will be established at a rate of one credit per acre per type. Credits from wetland enhancement or preservation will be accrued at a rate based on acreage and type established by the MBRT in advance of construction and specific to the bank's development plan and compensatory mitigation techniques used.

4. Upon completion of construction and submission of the as-built plans to the MBRT as required in Section III. M., ten percent of the anticipated final credits of the bank will be immediately available for transfer.

5. Periodically following construction, upon request of the Sponsor or a permitting agency, the MBRT will review the monitoring data and establish the new total of credits available for transfer. This crediting process will be based on the site's demonstrated progress toward the project goals as established in the development plan. This process will be continued until the bank site is closed. Final credit accrual may exceed the amount anticipated in the original development plan when a site exceeds the project goals as established in that development plan.

6. So long as site conditions are maintained in accordance with the project goals as established in the development plan, credits remain valid. There is no date of expiration beyond which accrued credits are discounted due to lack of debiting.

#### *B. Transferring Credits and Accounting Procedures*

1. The Sponsor may transfer credits to any participant specifically defined in this agreement for the purposes of the participant's permit compliance.

2. The Sponsor will determine the conditions of credit transfer to the participant. The Sponsor retains the right to deny the transfer of credits to any potential participant outside of the Pennsylvania Department of Transportation.

3. The Sponsor will provide documentation of the transfer of credits to a participant.

4. The Sponsor will enter the details of credit transfer (participant, number and type of credits transferred, date, and remaining bank credit balance) into the accounting record.

5. When PennDOT is the participant, it will provide mitigation for impacts less than 0.05 acres at a 1:1 ratio through the transfer of bank credits when the impact occurs in the service area of a bank having available credits.

6. Except as provided for in IV.B.5, ratios for the bank debiting to provide compensatory mitigation will be determined during the permit review process.

7. The Sponsor will submit to the MBRT a yearly summary of all credit transfers from banks operational in that year.

### **V. Procedures for the Physical Operation of a Mitigation Bank**

#### *A. Monitoring*

The Sponsor will monitor the mitigation bank in accordance with the protocol established in the Development Plan and provide a yearly report of such monitoring to the MBRT. Such monitoring and reporting will continue until bank closure.

#### *B. Maintenance*

The Sponsor will maintain the site until bank closure to promote the attainment of project goals in accordance with the Development Plan. Following bank closure, the Sponsor will maintain the mitigation bank as directed by the Permitting Agencies.

#### *C. Remediation*

Once credits are transferred from a bank, the Sponsor is responsible for preserving the performance of project goals and objectives that caused such credits to accrue. The Sponsor shall take all appropriate and practicable measures to ensure this preservation. These measures may include remediation at the bank; wetland restoration, creation, enhancement or preservation at a new location; or other efforts as directed by the permitting agencies.

#### *D. Closure*

The bank will be considered closed after the longer period of the following: (a) the monitoring program set forth in the Development Plan is complete, or, (b) when the Sponsor requests and the MBRT approves closure. Following closure, and as provided for by regulation, the Sponsor continues to hold the responsibility to maintain the site as a wetland in perpetuity, except

as provided for in Section V. E. below. Routine maintenance and monitoring will not be required after closure. However, as appropriate and practicable, the Permitting Agencies may direct the performance of specific maintenance or remediation efforts.

#### *E. Transfer of Legal Interest*

Upon bank closure, the Sponsor may propose, and the MBRT may approve, the transfer of legal interest in the site to any public or private entity so long as the site will continue to be protected in perpetuity. The proposal for transfer of interest must specifically stipulate which responsibilities of sponsorship are to be transferred to the entity as well as document the entity's awareness and willingness to accept such responsibilities.

### **VI. Ratification, Modification, and Termination of This Agreement**

Nothing in this agreement is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of signatory agencies.

The previously existing mitigation banking interagency agreement between PennDOT Engineering District 9-0, the Baltimore Corps District, the Pittsburgh Corps District, the DEP Southwest Regional Office, and the DEP Southcentral Regional Office and the previously existing mitigation banking interagency agreement between PennDOT Engineering District 3-0, the Baltimore Corps District, and the DEP Northcentral Regional Office, are hereby integrated into and superceded by this agreement. All existing plans, permits, negotiations and approvals made under these agreements specific to District 9-0 banks sites in Fulton, Huntingdon, and Cambria County sites and District 3-0 bank site at the former Hoffman Farm in Tioga County are validated under this agreement.

This agreement will take effect one (1) day after the date of the last signature. Periodic review of this agreement by signatory agencies will occur every five (5) years following ratification unless waived. This agreement may be modified with the approval of all signatories. Modifications of this agreement may be proposed by one or more signatories. The originator(s) of the modification shall circulate such draft modification(s) to all signatories for a sixty (60) day period of review. Approval of the modification(s) will be indicated by written acceptance. A signatory may terminate participation in

this agreement upon a ninety (90) day written notice to all other signatories.

**David C. Lawton,**

*Assistant Division Administrator, Federal Highway Administration, Pennsylvania Division.*

**Paul Wettlaufer,**

*Transportation Program Manager, Regulatory Branch, U.S. Army Corps of Engineers, Baltimore District.*

[FR Doc. 00-9279 Filed 4-13-00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-7006]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of petitions and intent to grant applications for exemption; request for comments.

**SUMMARY:** This notice announces the FMCSA's preliminary determination to grant the applications of 61 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

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

**ADDRESSES:** Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemptions in this notice, Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366-2519, FMCSA, Department of Transportation, 400 Seventh Street,

SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the office of the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

##### Background

On October 9, 1999, the Secretary of Transportation transferred the motor carrier safety functions performed by the Federal Highway Administration (FHWA) to the Office of Motor Carrier Safety, a new office created in the DOT. This transfer was performed pursuant to section 338 of the Fiscal Year 2000 Department of Transportation and Related Agencies Appropriations Act (Pub. L. 106-69, 113 Stat. 986, at 1022, October 9, 1999, as amended by Pub. L. 106-73, 113 Stat. 1046). The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748), transferred the functions to the FMCSA, a new administration within the DOT, effective January 1, 2000.

Sixty-one individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA has evaluated each of the 61 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 30 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

#### Qualifications of Applicants

##### 1. John W. Arnold

Mr. Arnold, 47, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/80 in the left eye. Mr. Arnold was examined in 1999 and his optometrist stated that, "I see no visual reason why John Arnold could not sufficiently operate a commercial vehicle."

Mr. Arnold has 22 years of experience driving tractor-trailer combinations, and drives 50,000 miles annually. He holds a Kentucky Class AC License and has had no accidents or convictions of moving violations in a CMV for the past three years.

##### 2. James H. Bailey

Mr. Bailey, 60, has had a chorioretinal scar in the macular area of his left eye since childhood. His best corrected visual acuity is 20/25 in his right eye and 20/400 in his left eye. In a 1999 examination, his optometrist stated, "In my medical opinion Mr. Bailey has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Bailey has driven straight trucks for 7 years and a total of 175,000 miles. He holds a Louisiana Class B commercial driver's license (CDL). His official driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

##### 3. Victor F. Brast, Jr.

Mr. Brast, 37, has been blind in his left eye since 1989 due to trauma. His visual acuity in the right eye is 20/20. Mr. Brast was examined in 1999, and his optometrist stated, "Mr. Brast has more than sufficient vision for operating a commercial vehicle."

Mr. Brast has driven straight trucks and tractor-trailer combination vehicles for 16 years each, averaging more than 60,000 miles per year. He holds a Texas CDL and has no accident or convictions of moving violations in a CMV on his driving record for the last 3 years.

##### 4. James P. Brooks

Mr. Brooks, 32, suffered an injury to his right eye in 1981. His best corrected visual acuity is 20/20 in the left eye and hand motions at 1 foot in the right eye. In a 1999 examination, his ophthalmologist stated, "In my opinion, he has sufficient vision to perform driving tasks required to operate a commercial vehicle."

Mr. Brooks has driven straight trucks for 3 years and a total of 66,000 miles. He holds an Illinois Class B CDL. His official driving record shows no

accidents or convictions of moving violations in a CMV for the last 3 years.

5. *Robert W. Brown*

Mr. Brown is 42 years old, and suffers from amblyopia and exotropia caused by a childhood injury in the left eye. His best corrected visual acuities are 20/20 in the right eye and 20/50 with eccentric viewing in the left eye. An optometrist examined Mr. Brown in 1999 and determined that he "has sufficient vision to operate a commercial vehicle."

Mr. Brown has driven tractor-trailer combinations for 12½ years and straight trucks for 2 years for a total of well over 1 million miles. He holds a Pennsylvania CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

6. *Benny J. Burke*

Mr. Burke, 45, has amblyopia in his right eye. His best corrected visual acuity is 20/800 in his right eye and 20/20 in his left eye. His optometrist has examined him in 1999 and stated that he has "sufficient vision to operate a commercial vehicle."

Mr. Burke has driven tractor-trailer combination vehicles for 25 years and over 1.2 million miles. He holds a CDL from Alabama and has no accidents or convictions of moving violations in a CMV on his driving record for the past three years.

7. *Derric D. Burrell*

Mr. Burrell, 33, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/400 in his right eye. In a 1999 examination, his optometrist stated, "Mr. Burrell has sufficient vision to drive and operate a Commercial Vehicle."

Mr. Burrell has driven tractor-trailer combination vehicles for 4 years and over 200,000 miles. He has also driven straight trucks for 2 months. He holds an Alabama CDL, and his official driving record shows two convictions for non-moving violations in a CMV during the last 3 years. The citations were for "Operating w/o Equipment as Required by Law" and "Failure to Obey Motor Carrier Rules/Regulations." His record shows no accidents in a CMV during the last 3 years.

8. *Anthony J. Cesternino*

Mr. Cesternino, 53, has a prosthetic left eye as the result of a childhood accident. His best corrected visual acuity in his right eye is 20/20. In a 1999 examination, his optometrist stated, "In my opinion, A.J. Cesternino

is visually capable of driving a commercial motor vehicle."

Mr. Cesternino has driven tractor-trailer combination vehicles for over 22 years and a total of 2.9 million miles. He has driven straight trucks for over 1 year and a total of more than 40,000 miles. He holds a Virginia Class A CDL. His official driving record shows no accident involvement in a CMV and one conviction of a moving violation in a CMV in the last 3 years. The citation was for "Disobey Traffic Signal."

9. *Ronald W. Coe, Sr.*

Mr. Coe, 53, has amblyopia in the left eye. His corrected vision in the right eye is 20/20 and 20/400 in the left eye. An optometrist examined him in 1999 and stated that, "It is my opinion that Mr. Coe has sufficient vision to perform the driving tasks required to operate a commercial vehicle, and has been doing that for many years."

Mr. Coe has 9½ years of experience driving straight trucks and six months driving tractor-trailers. He has driven a total of 500,000 miles. Mr. Coe holds a New York CDL and has had no accidents and one non-moving violation in a CMV for the past three years. He received a citation for "No/Improper Trip Permit."

10. *Richard A. Corey*

Mr. Corey, 47, has hyperopia with congenital amblyopia in the left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. Mr. Corey was examined in 1999 and his optometrist stated, "Mr. Corey has sufficient vision the [sic] perform driving tasks for a commercial vehicle."

Mr. Corey has 15 years of experience driving tractor-trailer combination vehicles for over 1.7 million miles. He holds a Washington CDL and his driving record for the last 3 years contains no convictions of moving violations or accidents in a CMV.

11. *James A. Creed*

Mr. Creed, 38, has had a corneal scar on his left eye since childhood. His best corrected vision is 20/15 in his right eye and 20/100 in his left eye. In a 1999 examination, his optometrist stated that "decreased vision of left eye due to old injury is stable and does not present any problem for the safe operation of a commercial vehicle."

Mr. Creed has driven straight trucks for 9 years, averaging 28,000 miles per year and tractor-trailer combinations for 12 years, averaging 8,000 miles per year. He holds a Virginia CDL and has no accidents or convictions of moving violations in a CMV for the past three years.

12. *William G. Croy*

Mr. Croy, 31, has a macular scar in the left eye with corrected vision of 20/200. His corrected vision in the right eye is 20/20. An optometrist examined him in 1999 and stated, "In my medical opinion his vision is sufficient to handle commercial driving as the peripheral vision is excellent and only the central fine detailed vision is affected in the left eye."

Mr. Croy has driven straight trucks for 8 years and approximately 250,000 miles. He holds a Wyoming CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

13. *Craig E. Dorrance*

Mr. Dorrance, 45, has reduced vision in his left eye due to trauma 20 years ago. In a 1999 examination, his visual acuity was correctable to 20/20 in the right eye and less than 20/400 in the left eye. His optometrist stated that he "has sufficient vision to operate [a] commercial vehicle."

Mr. Dorrance has operated straight trucks for 20 years and tractor-trailer combinations for 25 years, averaging 50,000 miles per year in each. He holds a Montana CDL and has no accident or convictions of moving violations in a CMV on his driving record for the last 3 years.

14. *Willie P. Estep*

Mr. Estep, 46, has amblyopia in his right eye. His best corrected visual acuity is 20/15 in his left eye and 20/400 in the right eye. In a 1999 examination his ophthalmologist stated, "It is my opinion that you have no visual limitations in performing your occupation as operator of [sic] a commercial vehicle."

Mr. Estep has driven tractor-trailer combination vehicles for 15 years and a total of over 1.8 million miles. He holds an Ohio CDL, and his official driving record shows one conviction for a non-moving "miscellaneous" violation during the last 3 years.

15. *Duane H. Eyre*

Mr. Eyre, 63, sustained an injury to his right eye in 1976. His best corrected vision is 20/20 in his left eye and 20/400 in his right eye. In a 1999 examination, his optometrist stated, "I would consider Mr. Duane H. Eyre to have sufficient vision and visual skills to perform the driving tasks to operate a commercial truck."

Mr. Eyre has driven straight trucks and tractor-trailer combination vehicles for 43 years, totalling 43,000 miles of driving in straight trucks and 6 million miles in tractor-trailer combination

vehicles. He has also driven buses for 2 years with total mileage of 50,000 miles. He holds a Montana Class A CDL. His official driving record shows no accidents in a CMV in the last 3 years. He was convicted of one violation during that period for "Not Licensed to Drive Type of Vehicle Being Operated."

*16. James W. Frion*

Mr. Frion, 36, has amblyopia in his right eye. His best corrected visual acuity 20/200 in his right eye and 20/20 in his left eye. In a 1999 examination, his optometrist stated, "In my opinion, Mr. Frion has sufficient vision to operate a commercial vehicle."

Mr. Frion has operated buses for 8 years for a total of 40,000 miles. He holds a Pennsylvania Class B CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV over the last 3 years.

*17. Lee Gallmeyer*

Mr. Gallmeyer, 62, has amblyopia in his right eye. He was examined in 1999 and his optometrist found visual acuity corrected to 20/60 in the right eye and 20/20 in the left eye. His optometrist stated, "I believe that despite this problem [amblyopia] that Mr. Gallmeyer has sufficient vision to adequately perform his driving tasks and operate a commercial vehicle."

Mr. Gallmeyer has driven tractor-trailer combination vehicles for 4.5 years and straight trucks for 2 years for a total of over 600,000 miles. He holds an Iowa CDL and has 1 non-moving violation and no accidents in a CMV for the last 3 years.

*18. Shawn B. Gaston*

Mr. Gaston, 50, has amblyopia in his right eye. His best corrected visual acuities are 20/20 in the left eye and 20/400 in the right eye. In a 1999 examination his optometrist said, "Mr. Gaston has been driving commercial vehicles for many years. It is my opinion that he has sufficient vision to continue performing such driving tasks."

Mr. Gaston has been driving straight trucks for 31 years and a total of over 3 million miles and tractor-trailer combination vehicles for 10 years and a total of 500,000 miles. Mr. Gaston holds a Pennsylvania Class AM CDL. His official driving record shows no accident or convictions of moving violations in a CMV in the last 3 years.

*19. James F. Gereau*

Mr. Gereau, 45, has nonprogressive chorioretinal damage and scar formation in the location of the macula of the left

eye as the result of an accident he had 15 years ago. His uncorrected vision in the right eye is 20/20. He was examined in 1999 and his optometrist stated, "In my opinion, based on past performance, and on the information obtained by vision examination, Mr. Gereau is capable of performing safely, the tasks required to operate a commercial motor vehicle in interstate commerce."

Mr. Gereau has 24 years of experience driving tractor-trailers, and drives approximately 90,000 miles annually. He holds a Wisconsin CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*20. Rodney M. Gingrich*

Mr. Gingrich, 74 has reduced vision on his left eye due to macular degeneration. His corrected vision in the right eye is 20/25 and 20/300 in the left eye. An ophthalmologist examined him in 1999 and stated to him that "you have, in my opinion, sufficient vision to operate a commercial vehicle."

Mr. Gingrich has 50 years of experience driving straight trucks with over 1 million miles driven and 3 years of experience driving tractor-trailer combinations with 30,000 miles driven. He holds a Minnesota CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*21. Esteban Gerardo Gonzalez*

Mr. Gonzalez, 46, has amblyopia in his left eye. His best corrected visual acuity is 20/15 in his right eye and 20/100 in his left eye. In a 1999 examination, his optometrist stated that, "By Texas DPS standards, he has a permanent eye condition that affects his visual acuity but doesn't disqualify him from legally driving. Therefore, I feel that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Gonzalez has driven tractor-trailer combination vehicles for 21 years and over 2 million miles and straight trucks for 5 years and 175,000 miles. He holds a Texas CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

*22. Harlan Lee Gunter*

Mr. Gunter, 39, has worn a prosthesis in his left eye since June 1995 due to injury. The visual acuity of his right eye is 20/20 without correction. In a 1999 examination, his optometrist said, "My medical opinion is that Mr. Gunter is able to operate a commercial vehicle because his right eye is completely normal."

Mr. Gunter has driven both straight trucks and tractor-trailer combination vehicles for 20 years. He has driven straight trucks a total of 1 million miles and tractor-trailer combination vehicles a total of over 1.4 million miles. He holds a Virginia Class A CDL. His official driving record shows no convictions of moving violations and involvement in one accident in a CMV in the last 3 years. Mr. Gunter was not charged with a violation in the accident.

*23. Thanh Van Ha*

Mr. Thanh Van Ha is a 36-year old man who has amblyopia. His corrected visual acuity is 20/15 in the right eye, and 20/200 in the left eye. An ophthalmologist examined him in 1999 and found him to have "sufficient vision to perform all the driving tasks required to drive and operate commercial vehicles."

Mr. Ha has a Class C California Driver's license. He has operated straight trucks for 10 years, driving approximately 20,400 miles annually. His official State driving record shows no accidents or citations in a CMV for the past 3 years.

*24. James O. Hancock*

Mr. Hancock, 61, has a prosthetic right eye due to a 1959 injury. He has 20/20 vision in his left eye. In a 1999 examination, his optometrist stated that he "is very capable of driving a commercial vehicle."

Mr. Hancock has 45 years of experience driving straight trucks, averaging 25,000 miles annually. He holds an Indiana CDL. His official State driving record reveals no accidents or citations in a CMV for the past 3 years.

*25. Paul A. Harrison*

Mr. Harrison, 50, is blind in the left eye as the result of an accident he had in 1994. His corrected vision in the right eye is 20/20. An optometrist examined him in 1999 and stated that, "In my opinion, Mr. Harrison has good vision in his right eye that would allow him to operate a commercial vehicle safely."

Mr. Harrison has driven straight trucks for 28 years and over 700,000 miles. He holds a Florida CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*26. Joseph H. Heidkamp, Jr.*

Joseph Heidkamp, 41, has amblyopia secondary to optic nerve atrophy in his right eye. His best corrected vision is 20/25+ in the left eye and 20/200 in the right eye. According to a 1999 examination, Mr. Heidkamp's optometrist stated, "It is our

determination that Mr. Heidkamp has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Heidkamp has driven straight trucks for 21 years and a total of over 1.4 million miles, and tractor-trailer combination vehicles for 2 years and a total of 70,000 miles. He holds a Pennsylvania Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

*27. Thomas J. Holtmann*

Mr. Holtmann, 57, has amblyopia of the left eye. His corrected vision in the right eye is 20/20 and 20/80 in the left eye. An optometrist has examined him in 1999 and stated, "It is my professional opinion that Tom Holtmann has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Holtmann has 38 years of experience driving tractor-trailers and straight trucks, and drives approximately 100,000 miles annually. He holds an Illinois CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*28. Larry D. Johnson*

Mr. Johnson, 38, has amblyopia in the left eye. His best corrected visual acuity is 20/20 in his right eye and 20/300 in his left eye. He was examined in December 1998, and his optometrist stated that, "Mr. Johnson has sufficient vision to perform the driving task required to operate a commercial vehicle, provided that he has his eyes examined every two years to assess his visual competency."

Mr. Johnson has driven tractor-trailer combination vehicles for 8 years. He drives 70,000 miles annually. He holds an Illinois CDL. For the past three years he has had no accidents or convictions of moving violations in a CMV.

*29. Gary Killian*

Mr. Killian, 51, has amblyopia in the right eye. The left eye is correctable to 20/20. His optometrist examined him in 1999 and determined, "[h]is commercial driving record is superb and he should be allowed to continue."

Mr. Killian has driven tractor-trailers for 25 years, and averages 135,000 miles of driving annually. He has a North Carolina CDL and has a driving record free of convictions of moving violations or accidents for the last three years in a CMV.

*30. Marvin L. Kiser, Jr.*

Mr. Kiser, 60, has a macular scar in his right eye. His best corrected visual acuity is 20/200 in his right eye and 20/20 in his left eye. In a 1999 examination, his ophthalmologist stated, "However, I do feel that he has sufficient vision to operate a commercial vehicle."

Mr. Kiser has operated tractor-trailer combination vehicles for 37 years and over 1.9 million miles. He holds a North Carolina CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*31. David R. Lambert*

Mr. David Lambert, 59, has been blind from birth in his right eye. His best corrected visual acuity is 20/400 in the right eye and 20/25 in the left eye. Mr. Lambert was examined in 1999, and his optometrist stated, "Given his good driving record and his likely improved vision in his left eye, I feel he has sufficient vision to operate a commercial vehicle."

Mr. Lambert holds a CDL from New Hampshire, has 23 years of experience driving straight trucks, and drives 10,000 miles annually. His driving record has been clear of accidents and convictions of moving violations for the past three years in a CMV.

*32. James R. Lanier*

Mr. Lanier is 55 years old and has amblyopia in the right eye. His visual acuity is light perception in his right eye and 20/20 in the left eye. As the result of a 1999 examination, his ophthalmologist stated that, "Mr. Lanier was found to have sufficient vision to perform his driving tasks as required to operate a commercial vehicle."

Mr. Lanier has 19 years of experience driving tractor-trailer combinations and has driven over 900,000 miles. He holds a North Carolina CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*33. Donald Eugene Lee*

Mr. Donald Lee, 35, is blind in his left eye as the result of an accident 20 years ago. The visual acuity in his right eye is 20/20+. In a 1999 examination, Mr. Lee's optometrist stated, "In my opinion Mr. Lee's visual abilities are excellent and do not impair his ability to safely operate a commercial motor vehicle."

Mr. Lee has 10 years of experience driving straight trucks for a total of 250,000 miles and 3 years of experience driving tractor-trailer combination vehicles for a total of 300,000 miles. Mr. Lee holds a Virginia CDL, and his official driving record shows no

accidents or convictions of moving violations in a CMV during the last 3 years.

*34. James Stanley Lewis*

Mr. Lewis, 42, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. In a 1999 examination, his optometrist stated, "Mr. Lewis has a very healthy pair of eyes. I believe that he is and will be very able visually to perform the driving tasks required to operate a commercial vehicle."

Mr. Lewis has driven straight trucks for 18 years for a total of over 1.1 million miles and tractor-trailer combination vehicles for 7 1/2 years for a total of over 75,000 miles. He holds an Alabama CDL, and his official driving record shows no accident and one conviction of a non-moving violation ("Expired/No Registration/Title") in a CMV during the last 3 years.

*35. Thomas J. Long*

Mr. Long, 30, has amblyopia in the left eye. His visual acuity is 20/400 in the left eye and 20/20 in the right eye. Mr. Long was examined in 1999 and his optometrist cited his successful 9 years of driving commercial vehicles and stated, "As a result of my ophthalmic examination, I see no reason Mr. Long would not be able to maintain his current driving record in operating a commercial vehicle."

Mr. Long has 10 years of experience operating straight trucks, driving approximately 60,000 miles annually. He holds a Maryland CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*36. Newton Heston Mahoney*

Mr. Mahoney, 51, has reduced vision in his left eye due to trauma in 1969. His best corrected visual acuity is 20/20+ in the right eye and 20/800 in the left eye. As the result of a 1999 examination, his optometrist certified that Mr. Mahoney has sufficient vision to perform the tasks required to operate a commercial motor vehicle.

Mr. Mahoney has driven straight trucks and tractor-trailer combination vehicles for 30 years, averaging 95,000 miles annually. He holds a Maryland CDL and has no accidents and one speeding violation in a CMV during the last 3 years.

*37. Ronald L. Martsching*

Mr. Martsching is a 32 year old man with a history of amblyopia in the right eye. A 1999 examination revealed that his visual acuity is 20/20 in the left eye and 20/400 in the right eye. The

optometrist stated the "Mr. Martsching has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Martsching has 4 years of experience driving straight trucks over 100,000 miles. He holds an Iowa Class D license with an endorsement allowing operation of vehicles weighing between 16,001 and 26,000 pounds. For the past three years he has had no accidents or convictions of moving violations in a CMV.

*38. Robert Evans McClure, Jr.*

Mr. McClure, 24, has had decreased vision in his left eye since 1993 when he developed chorioretinitis. A 1999 medical report indicates that his best corrected visual acuity in his right eye is 20/20 and hand motion in his left eye. His ophthalmologist states, "It is my belief that Mr. McClure does have sufficient vision to perform the driving task required to operate a commercial vehicle when he wears lenses over his right eye."

Robert McClure holds an Alabama class DM operator's license. He has driven straight trucks for 4 years and 40,000 miles. His driving record for the past 3 years reflects no convictions of moving traffic violations and no accidents in a CMV.

*39. Duane D. Mims*

Mr. Mims, 27, has only light perception in his right eye due to an accident 16 years ago. His visual acuity in his left eye is 20/20. In a December 1998 examination, his optometrist stated, "Under Alabama and Federal law he has sufficient vision to operate a commercial vehicle."

Mr. Mims has driven straight trucks for 7 years and over 70,000 miles and tractor-trailer combination vehicles for 3 years and 300,000 miles. He holds an Alabama CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*40. James A. Mohr*

Mr. Mohr is 53 years old and has had a prosthetic left eye for over 40 years. His best corrected vision in the right eye is 20/20. In a December 1998 examination, his optometrist stated that, "Jim Mohr has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Mohr has 16 years' experience of driving tractor-trailer trucks and drives 50,000 miles annually. He has a Montana CDL, and his driving record shows no accidents or convictions of moving violations in a CMV for the past three years.

*41. William A. Moore*

Mr. Moore, 62, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/400 in his right eye. In a 1998 examination, his optometrist stated, "I feel that Mr. Moore can operate a Comerical [sic] vehicle with his current eye condition."

Mr. Moore has driven tractor-trailer combination vehicles for 30 years and a total of 2.4 million miles. He holds a Nevada Class A CDL. His driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

*42. Leonard James Morton*

Mr. Morton is 53 years old, and has amblyopia in the left eye. His best corrected visual acuity is 20/200 in the left eye and 20/20 in the right eye. In a 1999 examination, his optometrist stated, "In my medical opinion, Mr. Morton has sufficient vision to perform the driving tasks required to operated [sic] a commercial vehicle."

Mr. Morton has 33 years of experience driving tractor-trailer combination vehicles for approximately 1 million miles. He holds a Wisconsin CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*43. Timothy W. Noble*

Mr. Noble, 32, has amblyopia in his right eye. His best corrected visual acuity is 20/50 in his right eye and 20/20 in his left eye. In a 1999 examination, his ophthalmologist stated, "Mr. Noble has good visual acuity and gross binocular function and should well be able to operate a commercial vehicles as he has done in the past since there has been no change in his ocular condition since he was a child and he has operated a commercial vehicle in the past without any difficulty."

Mr. Noble has operated tractor-trailer combination vehicles for over 3.5 years and a total of over 230,000 miles. He holds a Kentucky Class DA license. In the last 3 years, he was convicted of one moving violation (speeding) in a CMV and was involved in one accident in a CMV. According to the accident report the other driver involved in the accident attempted to change lanes in front of Mr. Noble in slowed traffic and caused him to strike the left side of the first vehicle. Neither driver was charged with a violation in the accident.

*44. Kevin J. O'Donnell*

Mr. O'Donnell, 28, has reduced visual acuity in his right eye due to a 1992 injury. His visual acuity is light perception in his right eye and 20/16 in

his left eye. Mr. O'Donnell was examined in 1999 and his ophthalmologist stated, "His visual condition is stable. He can operate a commercial vehicle."

Mr. O'Donnell has operated straight trucks for 6 years and over 120,000 miles. He holds an Illinois CDL and has no accident or convictions of moving violations in a CMV over the last 3 years.

*45. Gary L. Reveal*

Mr. Reveal, 53, has had optic nerve damage in his right eye since birth. His best corrected visual acuity is 20/15 in the left eye and no light perception in his right eye. In a 1999 examination, his optometrist stated, "He does have sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Reveal has driven straight trucks for 34 years and over 1 million miles. He has driven tractor-trailer combination vehicles for 15 years and 300,000 miles. He holds an Ohio Class A CDL. His official driving record shows no convictions of moving violations in a CMV during the last 3 years. He was involved in one accident in a CMV. No moving violations were issued to him in the case.

*46. John W. Robbins, Jr.*

Mr. Robbins is 37 years old, and has amblyopia in the right eye. His best corrected visual acuity is 20/200 in the right eye and 20/20 in the left eye. He was examined in 1999 and his optometrist stated that, "Mr. Robbins['] vision is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Robbins has 18 years of experience driving straight trucks over 450,000 miles and 13 years of experience driving tractor-trailer combinations over 400,000 miles. He holds a Mississippi CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

*47. Doyle R. Roundtree*

Mr. Roundtree, 66, has amblyopia in his left eye. The vision in his right eye is 20/20, uncorrected. In a 1999 examination, his optometrist stated that "he is able to function very well at operating a commercial vehicle."

Mr. Roundtree has 37 years of experience driving tractor-trailer combinations, driving approximately 100,000 miles annually. He holds an Ohio CDL and his 3-year driving record shows no accidents. He was issued a speeding citation in a commercial vehicle during his 3-year driving period.

*48. Charles L. Schnell*

Mr. Schnell, 50, has anophthalmos of his right eye which is due to multiple failed surgeries as a child. His best corrected visual acuity is 20/20 in his left eye. He wears a prosthesis in his right eye. In a 1999 examination, his ophthalmologist stated, "In my opinion, Mr. Schnell's current visual acuity is sufficient to enable him to perform the driving tasks required in operating a commercial vehicle."

Mr. Schnell has 8 years of experience operating tractor-trailer combination vehicles for a total of 720,000 miles. He holds a Florida CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*49. David L. Slack*

Mr. Slack, 47, has a traumatic corneal laceration and cataract in his left eye. His best corrected visual acuity is 20/20+ in the right eye and 20/200 in his left eye. In a 1999 examination, his ophthalmologist stated, "It is my opinion that the patient has significant vision and visual fields to perform the driving tests required to operate a commercial vehicle."

Mr. Slack has driven tractor-trailer combination vehicles for 21 years and a total of over 2.8 million miles. He holds a Texas Class A CDL. His official driving record shows no accident in a CMV in the last 3 years and one conviction of a non-moving violation for "Exceed/Violate Weight Limits of Vehicle/Truck."

*50. Everett J. Smeltzer*

Mr. Smeltzer, 46, has amblyopia in his left eye. His best corrected visual acuities are 20/20 in his right eye and 20/200 in his left eye. In a 1999 examination his optometrist stated, "In my opinion, his vision is sufficient for driving a commercial vehicle."

Mr. Smeltzer has driven straight trucks for over 29 years and a total of 870,000 miles. He has driven tractor-trailer combination vehicles for 22 years with mileage totaling over 1.5 million miles. He holds a Montana CDL and his official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

*51. Philip Smiddy*

Mr. Smiddy, 33, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/110 in his left eye. His doctor states that "Mr. Philip Smiddy has sufficient vision to perform the driving tasks necessary to operate a commercial vehicle."

Mr. Smiddy has driven straight trucks for 8 years and 40,000 miles and tractor-trailer combinations for 13 years and nearly 600,000 miles. He holds an Ohio CDL. His driving record shows no traffic accidents or convictions of moving violations in a CMV for the past 3 years.

*52. James C. Smith*

Mr. Smith, 53, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/100 in his left eye. In a 1999 examination, his optometrist stated, "I see no reason Mr. Smith would not be visually capable of operating a commercial vehicle."

Mr. Smith has driven straight trucks for 33 years and a total of 330,000 miles and tractor-trailer combination vehicles for 15 years and a total of 900,000 miles. Mr. Smith holds a Kentucky Class DA Operator/CDL license. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

*53. Terry L. Smith*

Mr. Smith, 53, has amblyopia in his right eye. His best visual acuity is 20/20 in his left eye and 20/300 in his right eye, corrected or uncorrected. He was examined in 1999, and his optometrist stated that, "Mr. Smith should have no problem performing commercial driving tasks."

Mr. Smith has driven straight trucks and tractor-trailer combinations for 21 years and well over 1 million miles. He holds a CDL from Montana and has no accidents or convictions of moving violations on his driving record for the past three years in a CMV.

*54. James N. Spencer*

Mr. Spencer, 69, has a central macular scar in his right eye. A 1999 examination revealed best corrected vision to be 20/100 in the right eye and 20/20 in the left eye. His ophthalmologist stated that, his successful 13-year career as a commercial driver "clearly proves that you have sufficient vision to continue to perform your driving tasks."

Mr. Spencer has driven straight trucks for 48 years and 3.6 million miles and tractor-trailer combinations for 18 years and over 3.3 million miles. He holds a California CDL and has no accidents or convictions of moving violations in a CMV on his driving record for the past 3 years.

*55. Teresa Mary Steeves*

Ms. Steeves, 58, suffered a retinal infection from measles as a child which left her with light perception vision in her left eye. The best visual acuity in her right eye is 20/30. In a 1999

examination, her optometrist stated, "Patient should be able to operate a commercial vehicle."

Ms. Steeves has driven tractor-trailer combination vehicles for 8 years and a total of over 800,000 miles. She holds a Florida Class A CDL. Her official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

*56. Roger R. Strehlow*

Mr. Strehlow, 55, has amblyopia in his left eye. His best corrected visual acuity in his right eye is 20/15+2 and finger counting at 1 foot in his left eye. In a 1999 examination, his optometrist stated, "Visually, he should be able to safely drive both commercial and private vehicles with the following two restrictions: 1. Wear corrective lenses; 2. Left hand outside mirror."

Mr. Strehlow has driven straight trucks for 15 years and a total of 375,000 miles and tractor-trailer combination vehicles for 23 years and a total of over 1.3 million miles. He holds a Wisconsin Class ABCD CDL. His official driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

*57. Timothy W. Strickland*

Mr. Strickland, 38, has amblyopia in his right eye. His best corrected visual acuity is 20/15 in his left eye and 20/200 in his right eye. In a 1999 examination, his optometrist stated, "In my opinion, Mr. Strickland could safely operate a commercial vehicle."

Mr. Strickland has operated tractor-trailer combination vehicles for 13 years and a total of 1.3 million miles. He holds a North Carolina Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*58. John T. Thomas*

Mr. Thomas, 57, has had a macular scar in his left eye since childhood. His best corrected visual acuity is 20/20 in his right eye and 20/200 in his left eye. He was examined in 1999, and his optometrist stated that, "I feel that Mr. Thomas has the vision necessary to permit him to operate a commercial vehicle."

Mr. Thomas has 30 years of experience operating tractor-trailer combinations and has driven over 3 million miles. He holds a North Carolina CDL, and has no accidents or convictions of moving violations in a CMV on his driving record for the past three years.

*59. Darel E. Thompson*

Mr. Thompson, 60, sustained an injury to his left eye in 1974 which left his visual acuity poor. His best corrected acuity is 20/400 in his left eye and 20/20 in his right eye. In a 1999 examination, his ophthalmologist stated, "In my opinion he has sufficient vision to perform a driving test required to operate a commercial vehicle, and has been doing so presumably uneventfully for the past 25 years."

Mr. Thompson has driven both straight trucks and tractor-trailer combination vehicles for 42 years, for a total of over 2.5 million miles. He holds a Washington Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*60. Mr. Ralph A. Thompson*

Mr. Ralph Thompson, 56, has amblyopia in his right eye. His visual acuity is 20/20 in his left eye and 20/400 in his right eye. An optometrist examined him in 1999 and certified he "has sufficient vision to perform the tasks needed to operate a commercial vehicle without restrictions."

Mr. Thompson has driven tractor-trailer combination vehicles for 40 years and over 2.4 million miles. He holds a Kentucky Class DA License. His driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

*61. Kevin Wayne Windham*

Mr. Windham, 36, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/200 in his left eye. In a 1999 examination, his optometrist certified that in his medical opinion, Mr. Windham has sufficient vision to perform the driving tasks required to operate a commercial vehicle.

Mr. Windham has 12 years of experience driving tractor-trailer combination vehicles for a total of 540,000 miles. He holds a Texas CDL, and his official driving record shows no accident or convictions of moving violations in a CMV for the last 3 years.

**Basis for Preliminary Determination To Grant Exemptions**

Independent studies support the principle that past driving performance is a reliable indicator of future safety. The studies are filed in FHWA Docket No. FHWA-97-2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the

program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 61 applicants have qualifications similar to those possessed by drivers in the waiver program. Their experiences and safe driving records while operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. Since past driving records are reliable precursors of the future, there is no reason to expect these individuals to drive less safely after receiving their exemptions. Indeed, there is every reason to expect at least the same level of safety, if not a greater level, because the applicants can have their exemptions revoked if they compile an unsafe driving record.

For these reasons, the FMCSA believes exempting the individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in 49 CFR 391.41(b)(10). As a condition of the exemption, therefore, the FMCSA proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FMCSA.

The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may issue exemptions from the vision requirement to the 61 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

**Authority:** 49 U.S.C. 322, 31136 and 31315; 49 CFR 1.73.

Issued on: April 6, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

[FR Doc. 00-9254 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-22-P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

**[FMCSA Docket No. 99-6480 (Formerly OMCS Docket No. 99-6480)]**

**Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** The FMCSA announces its decision to exempt 34 individuals from the vision requirement in 49 CFR 391.41(b)(10).

**DATES:** April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemptions in this notice, Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366-2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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**Background**

On January 1, 2000, the FMCSA was created to assume responsibilities relevant to motor carrier safety (See The Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 113 Stat. 1748 (December 9, 1999)). This explains the docket transfer.

Thirty-four individuals petitioned the FHWA for an exemption of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. The FMCSA is now responsible for processing the vision exemption applications of the 34 drivers. They are Rodney D. Blaschke, Thomas B. Blish, Ronnie Freamon Bowman, James C. Bryce, Thomas L. Corey, James D. Davis, Glenn Gee, Lloyd E. Hall, Byron Dale Hardie, Robert N. Heaton, Edward E. Hooker, James M. Irwin, Laurent G. Jacques, Alfred G. Jeffus, Oskia Johnson, Michael W. Jones, Don R. Kennedy, Dennis E. Krone, James F. Laverdure, Christopher P. Lefler, David R. Linzy, Richard Joseph Madler, Earl E. Martin, David P. McCabe, Richard John McKenzie, Jr., Kenneth R. Piechnik, Tommy L. Ray, Jr., William A. Reyes, Carl A. Sigg, Sammy

D. Steinsultz, Edward J. Sullivan, John C. Vantaggi, Winston Eugene White, and Turgut T. Yilmaz. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA evaluated the petitions on their merits and made a preliminary determination that the waivers should be granted. On December 6, 1999, the agency published notice of its preliminary determination and requested comments from the public (64 FR 68195). The comment period closed on January 5, 2000. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

**Vision and Driving Experience of the Applicants**

The vision requirement in 49 CFR 391.41(b)(10) provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

Since 1992, the FHWA has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket). The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 34 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, macular scar, and loss of an

eye due to trauma. In most cases, their eye conditions were not recently developed. Over half of the applicants were either born with their vision impairments or have had them since childhood. The other individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 43 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL). Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL, these 34 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 49 years. In the past 3 years, the 34 drivers had nine convictions for traffic violations among them. Two drivers were involved in accidents in their CMVs, but there were no injuries and neither of the CMV drivers received a citation. The drivers were convicted of seven moving traffic violations, six of them were for speeding and one was for "Traffic Control Device."

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a December 6, 1999, notice (64 FR 68195). Since the docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group, however, is supported by the information published at 64 FR 68195.

**Basis for Exemption Determination**

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the

exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket.

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). That experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions to those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical

Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 34 applicants, we note that cumulatively the applicants have had only two accidents and seven traffic violation in the last 3 years. Neither of the accidents resulted in bodily injury or issuance of a citation against the applicant. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe applicants' intrastate driving experience provides an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 5 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA

will impose requirements on the 34 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

#### Discussion of Comments

The FMCSA received two comments in this proceeding. Each comment was considered and is discussed below.

A letter was received from Mr. Oskia D. Johnson, one of the applicants under consideration. In his letter, Mr. Johnson asked that his application for a vision exemption be considered, citing his driving safety record.

In another comment, Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), including the driver qualification standards. Specifically, the AHAS: (1) Asks that the Office of Motor Carrier Research take no new action on exemption requests until an Administrator has been appointed and confirmed for the newly established Federal Motor Carrier Safety Administration; (2) asks the agency to clarify the consistency of the exemption application information, (3) objects to the agency's reliance on conclusions drawn from the vision waiver program, (4) suggests that the criteria used by the FHWA (now the FMCSA) for considering exemptions is flawed, (5) raises procedural objections to this proceeding, (6) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, (7) suggests that a recent Supreme Court

decision affects the legal validity of vision exemptions.

On the first issue regarding the appointment and confirmation of an Administrator for the Federal Motor Carrier Safety Administration, an Acting Deputy Administrator has been appointed and delegated functions required for the operation of the new agency. The other issues raised by the AHAS were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), and 65 FR 159 (January 3, 2000). We see no benefit in addressing these points again and refer interested parties to those earlier discussions for reasons why the points were rejected.

Notwithstanding the FMCSA's ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in this docket, the FMCSA must comply with *Rauenhorst v. United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 34 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

### Conclusion

After considering the comments to the docket and based upon its evaluation of the 34 waiver applications in accordance with *Rauenhorst v. United States Department of Transportation, Federal Highway Administration, supra*, the FMCSA exempts Rodney D.

Blaschke, Thomas B. Blish, Ronnie Freamon Bowman, James C. Bryce, Thomas L. Corey, James D. Davis, Glenn Gee, Lloyd E. Hall, Byron Dale Hardie, Robert N. Heaton, Edward E. Hooker, James M. Irwin, Laurent G. Jacques, Alfred G. Jeffus, Oskia Johnson, Michael W. Jones, Don R. Kennedy, Dennis E. Krone, James F. Laverdure, Christopher P. Lefler, David R. Linzy, Richard Joseph Madler, Earl E. Martin, David P. McCabe, Richard John McKenzie, Jr., Kenneth R. Piechnik, Tommy L. Ray, Jr., William A. Reyes, Carl A. Sigg, Sammy D. Steinsultz, Edward J. Sullivan, John C. Vantaggi, Winston Eugene White, and Turgut T. Yilmaz from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an

ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

**Authority:** 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: April 6, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

[FR Doc. 00-9255 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. 2000-6938]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of petition and intent to grant application for exemption; request for comments.

**SUMMARY:** This notice announces the FMCSA's preliminary determination to grant the application of Todd E. Kautzman for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations

(FMCSR). Granting the exemption will enable Mr. Kautzman to qualify as a driver of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

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

**ADDRESSES:** Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemption in this notice, Ms. Sandra Zywockarte, Office of Motor Carrier Research and Standards, (202) 366-2987; for information about the legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366-2519, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

##### Background and Procedural History

Mr. Kautzman originally applied for a waiver of the vision standard in 1995 when the Federal Highway Administration (FHWA) performed motor carrier safety functions within the Department of Transportation. On

January 1, 2000, the Federal Motor Carrier Safety Administration (FMCSA) was created and assumed responsibility for performing the motor carrier safety functions involved in this case. (See Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 113 Stat. 1748). Accordingly, the FMCSA is now the appropriate agency to consider Mr. Kautzman's exemption request.

Mr. Kautzman's application for an exemption has a lengthy history that is intertwined with the development and demise of the vision waiver study program conducted by the Office of Motor Carriers within the Federal Highway Administration. The history of that program forms the backdrop for our discussion and evaluation of his exemption application.

In 1992, the FHWA began a review of the vision standard in response to several waiver applications and congressional committee reports requesting such review. See 57 FR 6793, February 28, 1992. A commissioned study by the Ketron Corporation noted that adequate vision in both eyes is critical to driving and recommended that the current rule requiring binocular visual acuity of 20/40 in each eye not be changed. *Id.* at 6794-95. The study suggested that efforts be made to generate better empirical statistics for vision-impaired drivers.

In March 1992, a plan to obtain empirical data was implemented. The FHWA established a vision waiver study program in which experienced vision-impaired drivers would be granted temporary waivers for a period of up to three years. Their driving records during that period would be evaluated to determine if they could safely operate a CMV and if the vision standard could be changed. See 57 FR 10295, March 25, 1992. Under the program, waivers were available to drivers with good driving records for at least three years and with vision in one eye meeting the Federal standard of at least 20/40 (Snellen). 57 FR 31458, 31460, July 16, 1992. We stressed from the beginning of the program that "[a]ll drivers eligible for a waiver have proven experience and have demonstrated their ability to safely operate a CMV for a number of years." *Id.*, at 31459.

The conservative screening criteria applied to drivers in the program was not enough to overcome a challenge to the program's legality. In August 1994, the D.C. Circuit invalidated the vision waiver program "because the agency lacked the data necessary to support its determination that the vision waiver program 'is consistent with the safe operation of commercial motor vehicles.'" *Advocates for Highway and*

*Auto Safety v. FHWA*, 28 F.3d 1288 (D.C. Cir. 1994) (quoting 49 U.S.C. App. 2505(f) (1988)). The court held that any waiver of Federal safety regulations must be supported by empirical data showing that the waiver is consistent with the safe operation of commercial motor vehicles. Because the agency had acknowledged the lack of empirical data to establish a link between vision disorders and commercial motor vehicle safety, the court held that it was improper for the agency to conclude that granting the temporary waivers was consistent with the safe operation of commercial motor vehicles. *Id.*

In reaching this conclusion, the court rejected the agency's finding that the temporary waiver program was consistent with safety because it limited waivers to only those drivers with proven experience and good driving records. *Id.* at 1293. These factors, the court held, "beg the question whether those sight-impaired drivers will be able to operate their CMVs with the same degree of safety as those who meet the agency's current vision standards." *Id.* The court therefore vacated the agency's rule creating the program and remanded to the agency for further rulemaking proceedings.

In response to the remand, the FHWA proposed to revalidate the waiver study program. 59 FR 50887, October 6, 1994. The agency explained the underlying basis for the original vision waiver program, noting that a requirement that participating drivers "have a three-year safe driving record with their vision impairment" was based upon studies "indicating that past experience can be used to predict future performance \* \* \*." *Id.* at 50888. It also "relied upon opinions from the medical community that individuals with vision impairments are often able to compensate for that impairment over a period of time." *Ibid.* The agency chose three years to provide "added assurance that drivers would have sufficient time to develop compensatory behavior" and because it was the longest period of time for which driver histories were available. *Ibid.* Based on these principles and additional studies, the FHWA again determined "that three years of safe driving experience with the vision deficiency not only allowed for sufficient adjustment by drivers to the condition, but also provided the longest period of experience for which records were uniformly available from which to predict future performance." *Id.* at 50889.

We then determined that sufficient evidence existed to show that continued waiver for the group of drivers currently remaining in the program would be

consistent with safety. *Id.* at 50891. We based this finding upon studies showing that past accident-free performance tends to indicate safe performance in the future, as well as interim results showing that the remaining drivers in the program had accident rates lower than the general driving population. *Id.* at 50890. The agency also recognized that elimination of the waiver study program would mean that drivers with known safety records would be replaced by less-experienced drivers with unproven safety records. *Ibid.* In addition, the agency noted that by March 1996, "approximately 93 percent of the drivers presently participating in the study will have completed at least three years driving in the study program." *Id.* at 50891.

The Advocates for Highway and Auto Safety (AHAS) filed an emergency motion the same day the notice was published in the **Federal Register** asking the court to enforce its decision invalidating the program. On October 21, 1994, the court issued its mandate restating that the rule authorizing the vision waiver program was vacated, and remanded the case to the FHWA. Three days later, the court denied the AHAS motion, presumably finding that the agency had complied with the remand. The FHWA thereafter published a notice of final determination, announcing its decision to continue the waiver program through March 1996 for those drivers in the program. 59 FR 59386, November 17, 1994.

At this point—when the program was limited to existing participants as a consequence of the AHAS decision and the final determination—Mr. Kautzman first applied for a vision waiver. His May 1995 application was denied by the FHWA on September 5, 1995, on the basis that the program was closed to new participants. Mr. Kautzman appealed the agency's denial to the United States Court of Appeals for the Eighth Circuit, the same court before which a similar appeal by David R. Rauenhorst was pending. As the cases involved the same issue, the court approved an agreement between the FHWA and Mr. Kautzman to hold his case in abeyance until Mr. Rauenhorst's case was decided and then apply the Rauenhorst decision to Mr. Kautzman's case.

While the cases progressed, the vision waiver study program expired by its own terms on March 31, 1996. The FHWA issued "grandfather" rights to the drivers remaining in the program so they could continue to drive a CMV in interstate commerce. (49 CFR 391.64). This decision was based on their continuous and sustained safe

performance which showed that this particular group of monocular drivers could operate without compromising safety. 61 FR 13338, 13345, March 26, 1996. We emphasized in our decision that the drivers were experienced from the beginning, had been heavily monitored, and that the poorest performers had been eliminated. *Ibid.*

Shortly after the FHWA issued permanent waivers to the drivers in the waiver study program, the Eighth Circuit issued its decision in *Rauenhorst v. United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996). Mr. Rauenhorst was a monocular truck driver who would have met the criteria for admission to the waiver group, but who did not apply. See *id.* at 717-718. He later applied for an individual waiver and sought review of the agency's denial. The court held that the FHWA erred in failing to consider Mr. Rauenhorst's application for a waiver and directed the agency to grant "separate, individually tailored waivers" grounded on "specific tests or standards." *Id.* at 723.

After Rauenhorst, the FHWA began granting individual waivers for monocular drivers who met the same criteria as the drivers who participated in the waiver study program. For instance, we granted Mr. Rauenhorst a waiver, finding "that he has adapted his driving techniques to accommodate the limited vision in his right eye." 63 FR 1524, 1525, January 9, 1998. His application reflected over 21 years of experience driving with his vision deficiency and an accident-free record. *Ibid.* Similarly, we granted waivers to another 12 applicants who met the waiver study program criteria and thus demonstrated that they had adapted their driving skills to accommodate their vision deficiency. 63 FR 54519, October 9, 1998.

To conform with the Rauenhorst ruling, the FHWA agreed to individually evaluate Mr. Kautzman's application on its merits. The FHWA requested specific information and documentation from Mr. Kautzman about his driving experience and physical condition in correspondence exchanged between February 1997 and March 1998. Mr. Kautzman's responses were inconsistent. According to one statement, he stopped driving in April 1995. According to another, he stopped driving in October 1996. Both dates created a significant gap between the time he stopped driving and July 28, 1997, when he provided information about his driving experience following the Rauenhorst decision. Because of the gap, the FHWA concluded that Mr.

Kautzman failed to present evidence of 3 years' recent driving experience, a requirement in the vision waiver program. In addition, the agency could not determine exactly how much driving experience Mr. Kautzman had due to his contradictory statements. Thus, the FHWA denied his application on November 13, 1998.

Mr. Kautzman appealed the agency's decision (*Todd E. Kautzman and Richard Carlson v. United States Department of Transportation, Federal Highway Administration, and the United States of America*, No. 99-1070 (8th Cir. docketed Jan. 7, 1999)). The FHWA and Mr. Kautzman agreed to settle the case by remanding his application to the agency for reconsideration without regard to driving gaps arising during litigation. As part of the settlement, Mr. Kautzman provided the FHWA with an affidavit of his driving experience to resolve the discrepancies in his previous submissions. Using that information, we have evaluated his application as of the original filing date, May 22, 1995, without regard to gaps in experience after April 12, 1995, as required by the litigation settlement agreement. In accordance with 49 U.S.C. 31315 and 31136(e), we have preliminarily determined that exempting Mr. Kautzman from the vision requirement is likely to achieve a level of safety equal to, or great than, the level that would be achieved without the exemption.

#### **Mr. Kautzman's Experience and Vision Condition**

Mr. Kautzman has held a license to drive a commercial motor vehicle since 1986. His current CDL was issued by the State of North Dakota and expires on April 12, 2002. According to medical statements, Mr. Kautzman suffered a traumatic injury to his left eye at age one when a rubber-band projectile hit the central part of the cornea, destroying the central vision. Left eye vision measures 20/400 corrected or uncorrected. Right eye vision measures 20/15 corrected. According to his doctor, Mr. Kautzman's vision condition is stable and does not interfere with his ability to drive a CMV.

Mr. Kautzman began his driving career as a self-employed, part-time driver. From January 1989 until August 1, 1992, he transported agricultural products two Saturdays per month, driving about 5 hours each day. He became a full-time, self-employed driver on August 1, 1992, and worked 78 hours a week transporting grain, fertilizer, and feed in interstate commerce until April 12, 1995.

Mr. Kautzman stopped driving on April 12, 1995, when he found he was not qualified in interstate commerce, and took immediate steps to seek a waiver from the vision standard. No consideration was given to his application at that time because the vision waiver program had ceased to operate. As the FMCSA is responsible for delaying consideration of his application until now, our agreement to settle the most recent lawsuit and the interest of equity constrain us to consider his application without regard to his lack of driving since April 1995.

#### **Analysis of Mr. Kautzman's Qualifications**

Visual capacity in Mr. Kautzman's left eye measures 20/400 (Snellen) with or without correction. The standard applicable to drivers of commercial motor vehicles in interstate commerce requires vision in each eye to measure at least 20/40 Snellen, corrected or uncorrected (49 CFR 391.41(b)(10)). As his vision does not meet the regulation's standard, Mr. Kautzman cannot qualify to drive in interstate commerce unless he is exempted from its applicability.

Mr. Kautzman holds a valid CDL today, just as he did in 1995. The vision condition of his left eye has long been stable, and his right eye meets the vision standard. Moreover, his doctor does not believe the vision deficiency affects Mr. Kautzman's ability to perform the tasks involved in driving a CMV safely. Other than the vision deficiency in his left eye, Mr. Kautzman meets all other physical qualification standards in 49 CFR part 391. Furthermore, his driving record from 1992 to the present reflects none of the disqualifying conditions specified in the vision waiver criteria.

In the three years prior to April 12, 1995, Mr. Kautzman had considerable experience driving a CMV. Until August 1, 1992, he spent three years driving a CMV casually, 10 hours a month, transporting agricultural products. From August 1, 1992, through April 12, 1995, he drove a tractor-trailer combination transporting feed and grain, regularly 78 hours a week. If he averaged a modest 40 miles per hour, Mr. Kautzman would have compiled over 300,000 accident-free, incident-free, violation-free miles in both inter- and intrastate commerce. If any applicant presented such a three-year record to the agency today, undoubtedly an exemption would be approved under the criteria we have been employing.

The only evidence we have of Mr. Kautzman's safety record since 1995 is that which he compiled in a private automobile (non-CMV). It shows that he had two speeding convictions, one in

1997 and one in 1998. The agreement settling Mr. Kautzman's lawsuit does not preclude the agency's consideration of such safety events. Neither conviction, however, would have been disqualifying, even if the violation had been committed in a CMV, and there is no cause to conclude that either conviction related to Mr. Kautzman's visual deficiency.

#### **Basis for Preliminary Determination To Grant Exemption**

Independent studies support the principle that past driving performance is a reliable indicator of future safety. The studies are filed in FHWA Docket No. FHWA-97-2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

In evaluating applications, it is the policy of the agency to screen out submissions which do not meet the criteria for consideration in terms of minimum visual capacity, duration and recency of CMV driving experience, and driving record. Thereafter, each application is individually considered on its merits. To be sure, in Mr. Kautzman's case, his experience and safe driving record in a CMV are not as recent as would normally pass the initial screening. The unique circumstances of this case justify special consideration due to the protracted litigation. In Mr. Kautzman's case, therefore, the FMCSA is dispensing with the screening stage, and has considered his case on the merits. Mr. Kautzman has qualifications similar to those possessed by drivers in the waiver program. His actual driving of CMVs was unusually intense over a 32-month period in all periods of the day and night, and under varying highway conditions. His experience and safe driving record operating CMVs demonstrate that he had adapted his driving skills to accommodate his vision deficiency. For these reasons, and under the conditions set forth below, the FMCSA believes exempting this applicant from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to or greater than the level that would

be achieved without the exemption as long as vision in his better eye continues to meet the standard specified in 49 CFR 391.41(b)(10). As a condition of the exemption, therefore, the FMCSA proposes to impose requirements on Mr. Kautzman similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are the following: (1) That he be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in his better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests he is otherwise physically qualified under 49 CFR 391.41; (2) that he provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that he provide a copy of the annual medical certification to his employer for retention in its driver qualification file or keep a copy in his driver qualification file if he is self-employed. He must also have a copy of the certification when driving to present to a duly authorized Federal, State, or local enforcement official.

In accordance with revised 49 U.S.C. 31315 and 31136(e), the proposed exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) Mr. Kautzman fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e). If the exemption is effective at the end of the 2-year period, Mr. Kautzman may apply to the FMCSA for a renewal under procedures in effect at that time.

#### **Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested parties on the exemption petition and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may issue an exemption to Mr. Kautzman and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to

late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

A copy of this notice will be mailed to compliance and enforcement personnel in the State of North Dakota, in accordance with 49 U.S.C. 31315(b)(7) and 31136(e), and we welcome comments from State officials.

**Authority:** 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: April 6, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator.*

[FR Doc. 00-9256 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-22-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

[Docket No. MARAD-2000-7224]

#### **Information Collection Available for Public Comments and Recommendations**

**AGENCY:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of a new information collection titled "Intermodal Access Impediments to U.S. Ports and Marine Terminals Survey."

**DATES:** Comments should be submitted on or before June 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Evie Chitwood, Office of Intermodal Development, 400 Seventh Street, SW, Room 7209, Washington, DC 20590, telephone number—202-366-5127. Copies of this collection can also be obtained from that office.

#### **SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Intermodal Access Impediments to U.S. Ports and Marine Terminals Survey.

*Type of Request:* Approval of a new information collection.

*OMB Control Number:* 2133-NEW.  
*Form Number:* MA.

*Expiration Date of Approval:* Three years from the date of approval.

*Summary of Collection of Information:* The "Intermodal Access Impediments to U.S. Ports and Marine Terminals Survey," was designed to be a questionnaire of critical infrastructure impediments that impact the Nation's

ports and marine terminals. The collection of information will provide key highway, truck, rail, and waterside access data and will highlight the access impediments that affect the flow of cargo through U.S. ports and terminals.

*Need and Use of the Information:* The collection of information is necessary for MARAD officials to identify and assess the physical infrastructure impediments that impact the major ports and marine terminals. The annual data received will be used to statistically demonstrate the change in access impediments to the Nation's ports and terminals.

*Description of Respondents:* U.S. Ports and Terminals (including the top 50 U.S. deepwater ports, the top 25 container ports and the 14 strategic ports as well as the major shallow draft ports).

*Annual Responses:* 162 responses.

*Annual Burden:* 162 hours.

*Comments:* Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at <http://dmses.dot.gov/submit>. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., edt. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

By Order of the Maritime Administrator.

Dated: April 10, 2000.

**Joel C. Richard,**

*Secretary.*

[FR Doc. 00-9253 Filed 4-13-00; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### Federal Motor Carrier Safety Administration

[Docket No. RSPA-00-7021 (PDA-23(RF))]

#### Application by Med/Waste, Inc. and Sanford Motors, Inc. for a Preemption Determination as to Morrisville, PA, Requirements for Transportation of "Dangerous Waste"

**AGENCY:** Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Public Notice and Invitation to Comment.

**SUMMARY:** Interested parties are invited to submit comments on an application by Med/Waste, Inc. and Sanford Motors, Inc. for an administrative determination whether Federal hazardous materials transportation law preempts requirements of the Borough of Morrisville, Pennsylvania, concerning the transportation of "dangerous waste" (including infectious, chemotherapeutic, or hazardous wastes) within the Borough of Morrisville.

**DATES:** Comments received on or before May 30, 2000, and rebuttal comments received on or before July 13, 2000, will be considered before an administrative ruling is issued jointly by RSPA's Associate Administrator for Hazardous Materials Safety and FMCSA's Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL-1401, 400 Seventh Street, SW, Washington, DC 20590-0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "<http://dms.dot.gov>."

Comments must refer to Docket No. RSPA-00-7021 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at <http://dms.dot.gov>, and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to (1) Med/Waste's Vice President for Legal Affairs, Ross M. Johnston, Esq., Med/Waste, Inc., 6175 N.W. 153rd Street, Suite 324, Miami Lakes, FL 33014, and (2) the solicitor to the Borough of Morrisville, Stephen L. Needles, Esq., Stuckert and Yates, Two North State Street, P.O. Box 70, Newtown, PA 18940. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Mr. Johnston and Mr. Needles at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "<http://rspa-atty.dot.gov>." A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202-366-4400), or Joseph Solomey, Office of the Chief Counsel, Federal Highway Administration (Tel. No. 202-366-1374), U.S. Department of Transportation, Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Application for a Preemption Determination

Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively "Med/Waste") have applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts requirements contained in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania, applicable to the transportation of "dangerous waste" (including infectious, chemotherapeutic, and hazardous wastes as defined in Ordinance No. 902) in and through the Borough of Morrisville. In a later letter to RSPA's Office of the Chief Counsel, Med/Waste provided the name of the Borough Manager of the Borough of Morrisville and a copy of a newspaper article that relates to the adoption of Ordinance No. 902. Through its solicitor, the Borough of Morrisville responded to Med/Waste's application in a March 1, 2000 letter.

The test of Med/Waste's application and a list of the exhibits to the application are set forth in Appendix A to this notice. A paper copy of the exhibits to Med/Waste's application (which have been placed in the public docket) will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** above. The Borough of Morrisville's March 1, 2000 letter is Appendix B to this notice.

In the application, Med/Waste challenges:

(1) The definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 of Ordinance No. 902 and the use of the term "dangerous waste" throughout the ordinance. In Section 01, "dangerous waste" is defined to mean "infectious wastes, chemotherapeutic wastes, or hazardous wastes, or any combination thereof." Section 07 of Ordinance No. 902 provides that "For purposes of this Ordinance, all Hospital Waste shall be presumed to be DANGEROUS WASTE." Med/Waste asserts that the terms "infectious waste," "hospital waste," and "dangerous waste" conflict with the designations, descriptions and classifications of hazardous materials in the HMR.

(2) The designation of Pennsylvania Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough of Morrisville that may be used by trucks transporting dangerous waste. Med/Waste contends that this limitation does not comply with the requirements in 49 U.S.C. 5112 and 31114, and that this restriction cuts off its access to its facility that holds a permit from the Pennsylvania Department of Environmental Protection to transport infectious and chemotherapeutic wastes that are not "hazardous wastes" under Pennsylvania regulations. Med/Waste also states that the routing limitation may be a constructive taking of its property without just compensation in violation of the Fifth Amendment to the U.S. Constitution.

(3) The requirement in Section 05(a) of Ordinance No. 902 that each truck transporting dangerous waste:

shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act.

Med/Waste states that the ordinance requires the preparation of a hazardous waste manifest for shipments of regulated medical waste, in conflict with the HMR. Med/Waste asserts that

"Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262."

In its responding letter, the Borough of Morrisville argues that, under *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978), and *Ensco, Inc. v. Dumas*, 807 F.2d 743 (8th cir. 1986),

states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The Borough of Morrisville contends that the "elements of the definitions" of "Infectious Waste," "Hospital Waste," and "Dangerous Waste" are substantively the same as the definitions in 49 CFR 173.134(a)(4). It acknowledges that the Borough's requirement for drivers to carry a written manifest when hauling dangerous wastes "may be different from the federal regulation," but states that this difference "does not render the applicant's ability to comply with 40 CFR 261.3 impossible, nor does it impede the objectives of the federal law."

In its letter, the Borough of Morrisville also states that its ordinance does not restrict Med/Waste's ability to use Route 1 within the Borough. It refers to the authority of a State to designate highway routes for the transportation of hazardous materials, under 49 U.S.C. 5112, and asserts that "In Pennsylvania, this right is further delegated to counties and municipalities by Section 304 of the Municipal Waste, Planning, Recycling and Waste Reduction Act, 53 Pa.C.S.A § 4000.304."

## II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to Med/Waste's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

(1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption

provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93-633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 1941; *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law or DOT grants a waiver or preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marketing, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d). Subsection (c)(1) of 49 U.S.C. 5125 provides that, beginning two years after DOT prescribes regulations on standards to be applied by States and Indian tribes in establishing requirements on highway routing of hazardous materials, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).<sup>1</sup>

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate

<sup>1</sup> DOT's standards and procedures for State and Indian tribe requirements for highway routing of non-radioactive hazardous materials are issued under 49 U.S.C. 5112(b) and contained in 49 CFR Part 397, subpart C.

Commerce Committee “endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.” S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials in necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 Section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the “linchpin” in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm’n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA “without substantive change,” at 49 U.S.C. Chapter 51. Public. Law. 103–272, 108 Stat. 745.)

### III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to FMCSA and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2) (as added October 9, 1999, 64 FR 56720, 56721 [Oct. 19, 1999], and revised January 1, 2000, 65 FR 220, 221 [Jan. 4, 2000]). Because Med/Waste’s application concerns both highway routing issues and non-highway routing issues, FMCSA’s Administrator will address highway routing issues, and RSPA’s Associate Administrator for

Hazardous Materials Safety will address non-highway routing issues. 49 CFR 107.209(a), 397.211(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, FMCSA and RSPA will publish their determination in the **Federal Register**. See 49 CFR 107.209(d), 397.211(d). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm’n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), FMCSA and RSPA are guided by the principles and policies set forth in Executive Order No. 13132, entitled “Federalism” (64 FR 43255 (August 4, 1999)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which FMCSA and RSPA have implemented through their regulations.

### IV. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts the Borough of Morrisville’s requirements challenged by Med/Waste. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the Borough of Morrisville’s requirements in Ordinance No. 902 were adopted and are applied and enforced, including but not limited to:

(1) whether the term “dangerous waste” in Ordinance No. 902 includes materials that are not defined as an “infectious substance” under the HMR, 49 CFR 173.134(a);

(2) how the materials defined as “regulated medical waste” in the HMR, 49 CFR 173.134, are categorized or classified under Ordinance No. 902;

(3) whether the term “hazardous waste” in Ordinance No. 902 includes materials that are not defined as a “hazardous waste” in the HMR, 49 CFR 171.8;

(4) whether Ordinance No. 902 requires a hazardous waste manifest to be prepared for, and accompany, a shipment of an “infectious substance” or a “regulated medical waste,” as those two terms are defined in the HMR, 49 CFR 173.134(a);

(5) the application of Pennsylvania’s Municipal Waste Planning and Recycling and Waste Reduction Act, 53 P.S. 4000.101 *et seq.*, and solid Waste Management Act, 35 P.S. 6018.101 *et seq.*, and the regulations issued under those statutes to the transportation of an “infectious substance” or a “regulated medical waste,” as those two terms are defined in the HMR<sup>2</sup>;

(6) the extent to which adoption of the routing limitation in Section 02 of Ordinance No. 902 was in compliance with the Federal standards set forth in 49 CFR 397.71(b), including but not limited to the standards concerning:

(a) Notice to the public, 49 CFR 397.71(b)(2);

(b) Notice to officials responsible for highway routing in New Jersey or in political subdivisions adjacent to the Borough of Morrisville, 49 CFR 397.71(b)(3);

(c) Reasonable access for motor vehicles transporting hazardous materials to terminals; points of unloading, unloading, pickup and delivery; and facilities for food, fuel, repairs, rest, and safe havens, 49 CFR 397.71(b)(7);

(d) The State’s actions to ensure that its political subdivisions comply with 49 CFR Part 397, subpart C, 49 CFR 397.71(b)(8);

(e) Population density, type of highway, type and quantity of hazardous material, emergency response capabilities, consultation with affected persons, exposure and other risk factors, terrain considerations, continuity of routes, alternative routes, effects on commerce, delays in transportation, climatic conditions, and congestion and accident history, 397.71(b)(9); and

(7) whether the State of Pennsylvania has provided information of the routing limitation in Section 02 of Ordinance No. 902 to DOT, as specified in 49 CFR 397.73(b). Persons intending to

<sup>2</sup> Please provide a copy of any State regulation referred to in a comment on Med/Waste’s application.

comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211, and 397.201–397.211.

Issued in Washington, DC on April 10, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

**Robert A. McGuire,**

*Acting Associate Administrator for Hazardous Materials Safety, Research and Special Programs, Administration.*

## Appendix A

December 30, 1999.

Hazardous Materials Preemption Docket,  
*Associate Administrator for Hazardous Materials Safety, Research and Special Administration, U.S. Department of Transportation, Washington, DC.*

### Preemption Application

Dear Sir/Madam; Pursuant to 49 USC § 5125(d) 1999 and the Department of Transportation regulations 49 CFR § 107.203 *et seq.*, Med/Waste, Inc., a publicly traded Delaware corporation together with its subsidiary Sanford Motors, Inc., a Pennsylvania corporation (hereafter referred to as "SMI") make application to the Associate Administrator to determine that the provisions of the Borough of Morrisville's Ordinance No. 902, enacted September 20, 1999, are preempted by the Hazardous Material Regulations, 49 CFR § 171–173 1999, as hereinafter set forth.

The full text of the Morrisville ordinance No. 902 is attached as Exhibit "A". Specific provisions of the Morrisville Ordinance No. 902 and the preemptive Hazardous Material Regulations counterpart are identified below:

#### 1. Section 01: Definitions.

(c) **Infectious Waste.** "Infectious Waste" is waste that contains or may contain any disease-producing microorganism or material. Infectious wastes include but are not limited to the following:

(i) Those wastes that are generated by hospitalized patients who are isolated in separate rooms in order to protect others from their severe and communicable diseases.

(ii) All cultures and stocks of etiologic agents.

(iii) All waste blood and blood products.

(iv) Tissues, organs, body parts, blood and body fluids that are removed during surgery and autopsy, and other wastes generated by surgery or autopsy of septic cases or patients with infectious diseases.

(v) Wastes that were in contact with pathogens in any type of laboratory work, including collection containers, culture dishes,

(vi) slides, plates and assemblies for diagnostic tests; and devices used to transfer, inoculate and mix cultures.

(vii) Sharps, including hypodermic needles, suture needles, disposable razors, syringes, Pasteur pipettes, broken glass and scalpel blades.

(viii) Wastes that were in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers.

(ix) Carcasses and body parts of all animals, which were exposed to zoonotic pathogens.

(x) Animal bedding and other wastes that were in contact with diseased or laboratory research animals or their excretions, secretions, carcasses or body parts.

(xi) Waste biologicals (e.g., vaccines) produced by pharmaceutical companies for human or veterinary use.

\* \* \* \* \*

(e) **Storage.** "Storage" means the holding of DANGEROUS WASTE for a temporary period, at the end of which the DANGEROUS WASTE is treated, disposed of, moved, or stored elsewhere.

(f) **Dangerous Waste.** "DANGEROUS WASTE" means infectious wastes, or chemotherapeutic wastes, or hazardous wastes, or any combination thereof.

(g) **Hospital Waste.** "Hospital waste" means waste of any sort generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or business. The term shall also include paper products, bedding, towels, containers, or cleaning implements that have been exposed to infectious, chemotherapeutic, pathological wastes, solid

The definitions of the ordinance are in conflict with and therefore preempted by the corresponding definition in the Hazardous Material Regulations that designate, describe and classify hazardous materials as follows:

"Infectious Waste" and "Hospital Waste" and "Dangerous Waste" are in conflict with 49 CFR §§ 173.134(a)(4) and 173.197, describing Regulated Medical Waste. The definitions of the Ordinance also use the word "Dangerous" in conflict with HMR's use of the word at 49 CFR §§ 171.14(b); 172.548 and 173.124(c).

Section 02 of the Ordinance reads as follows:

### Section 02: Routes

Because the streets and roads of the Borough of Morrisville are generally narrow, winding, and in places congested, and not generally designed to accommodate heavy or constant truck traffic, the Borough Council may from time to time designate certain routes and/or particular streets for use by motor vehicle trucks hauling DANGEROUS WASTE. The following streets are the only streets in the Borough in Morrisville designated at this time for transportation by truck of DANGEROUS WASTE:

PA Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls)  
No such motor vehicle truck shall exceed the load limit for any such routes or road.

This section of the Ordinance conflicts with the definition and use of the word "Dangerous" by HMR and restricts the route in such a manner as to make it impossible for SMI to enter or exit from its permitted transportation facility located at 1307 south Pennsylvania Avenue, Morrisville, PA 19067, without violating the Routing section of the Ordinance (see SMI Pennsylvania permit attached as Exhibit "B"). SMI has operated a

permitted facility at the same address in Morrisville for over five years. The Ordinance does not comply with 49 USC § 5112 and violates the Surface Transportation Act of 1982, 49 USC § 31114, which guarantees trucks and trailers "reasonable access" between the national network of roads and "terminals". There is also an argument that the Ordinance, as written, would be a constructive taking of SMI's property without just compensation in violation of the Fifth Amendment.

Section 03 and 04 read as follows:

### Section 03: Speed Limits

Trucks carrying DANGEROUS WASTE within the Borough of Morrisville are hereby limited to the designated speed limit on Route 1, and the posted speed limit on any other state or Borough road within the Borough of Morrisville that may eventually be approved for use by such trucks bearing DANGEROUS WASTE.

### Section 04: Conditions of Operations

All Trucks carrying DANGEROUS WASTE in the Borough of Morrisville shall operate with their headlights on at all times.

Sections 03 and 04 are in conflict with HMR in the use of the word "Dangerous" as noted above.

Section 05 of the Ordinance reads as follows:

### SECTION 05: Miscellaneous Requirements

(a) Each truck hauling DANGEROUS WASTE shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act. Such manifest shall be presented upon request of any Morrisville Borough police officer.

(b) Each truck hauling DANGEROUS WASTE shall be subject to a safety inspection at any time.

(c) Each driver of any such truck shall immediately report any accident or collision involving his truck to the Borough of Morrisville police.

(d) No drive of a motor vehicle truck hauling DANGEROUS WASTE in the Borough of Morrisville shall be permitted to enter the Borough of Morrisville with such truck unless such drive, or the owner of consignor of such DANGEROUS WASTE, shall first have deposited with the Borough Secretary in indemnity bond with limits of not less than \$50,000,000 per occurrence. Such bond shall be conditioned to pay all or part of such sum as damages or restitution to the Borough of Morrisville unless the responsible part shall reimburse any person, firm, partnership, trust or corporation, including the Borough itself, for any damages to person, property or natural resources resulting from the hauling of such DANGEROUS WASTE, or accidents or spills incident thereto, in the Borough of Morrisville.

(e) Any truck or vehicle carrying DANGEROUS WASTE shall comply with all DEP and state regulations and laws pertaining thereto.

The Provisions of Section 05 of the Ordinance are in conflict with HMR's use of

the word "Dangerous" as noted above. In addition, the requirement in subsection (a) for haulers of "Dangerous Waste" to carry and have a manifest as required under the Resource Conservation and Recovery Act is in conflict with HMR's requirement to carry manifests as require by EPA's regulation (see 49 CFR 172.205(a)). Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262. Therefore the Ordinance requires the preparation, execution and use of shipping documents in conflict with the HMR Requirements.

Sections 06 and 07 of the Ordinance read as follows:

**Section 06: Storage Prohibition**

Except as provided for by DEP regulations, the storage of DANGEROUS WASTE IN ONE PLACE FOR OVER 24 HOURS WITHIN THE borough of Morrisville is entirely prohibited. Storage in separate places within the Borough for a cumulative total of 48 hours or more is also prohibited.

**Section 07: Presumption**

For purposes of this Ordinance, all Hospital Waste will be presumed to be DANGEROUS WASTE.

Sections 06 and 07 are in conflict with HMR's use of the word Dangerous as noted above.

Section 08 of the Ordinance reads as follows:

**Section 08: Penalties**

Any person who operates a motor vehicle truck in violation of any of the provisions of this Ordinance shall, upon conviction, be fined not less than \$100 nor more than \$500 and may, in addition or alternatively, be sentenced to jail for a period or term not exceeding 90 days. Such sentences may not be suspended.

The penalties provision of this Ordinance is meaningless, due to the fact that the definitions and requirements of the Ordinance are preempted by operation of 49 U.S.C. § 5125 and the authorized regulations, 49 CFR §§ 171-173.

It is respectfully requested that the Provisions of Ordinance No. 902 of the Borough of Morrisville be preempted pursuant to 49 U.S.C. § 5125 and 49 CFR § 201-213 because the provisions are: (1) in conflict with the designations, description and classification of hazardous materials as stated in the Hazardous Materials Regulations; (2) in conflict with the preparation, execution and use of shipping papers as stated in the Hazardous Materials Regulations; and (3) compliance with the routing requirement of the Ordinance is impossible for the SMI permitted facility located within Morrisville.

Moreover, the enforcement of the Morrisville Ordinance with its redefined hazardous material classification scheme, additional requirement for shipping papers and impossible requirements would create an obstacle to the accomplishment and execution of the Hazardous Materials Transportation Uniform Safety Act and Hazardous Materials Regulations; *Chlorine Institute v. California Highway Patrol*, 29 F. 3d 495, 498 (9th Cir. 1994).

Please address all correspondence regarding this application to the undersigned attorney.

Certification: I certify that a copy of this application has been mailed this 30th day of December to Borough Manager, Borough of Morrisville, 35 Union Street, Morrisville, PA 19067, with instructions that the Borough of Morrisville may submit comments regarding this application to the Associate Administrator.

Sincerely,  
Med/Waste, Inc. and its Subsidiary Sanford Motors, Inc.

Ross M. Johnston,  
*Vice President for Legal Affairs.*

cc: Craig Sanford, Sanford Motors, Inc.  
Gary Lightman.

List of Exhibits

A. Borough of Morrisville, PA, Ordinance No. 902, enacted September 20, 1999.

B. Pennsylvania Department of Environmental Protection letter to Sanford Motors, Inc., dated September 29, 1999, and enclosed Infectious & Chemotherapeutic Waste Transporter License.

**Appendix B**

March 1, 2000

Hazardous Materials Preemption Docket,  
*Associate Administrator for Hazardous Materials Safety, Research and Special Administration, U.S. Department of Transportation, Washington, DC.*

Re: Preemption Application of Med/Waste, Inc. dated December 30, 1999

Dear Sir or Madam: I am the solicitor to the Borough of Morrisville, Bucks County, Pennsylvania whose "Dangerous Waste Ordinance" is being challenged in the above-captioned application. By this letter, I would like to set forth Morrisville Borough's position in asking that the preemption application be dismissed. I apologize for the delay in responding, but I did not receive a copy of Med/Waste's letter/application to you until on or after January 27, 2000.

Initially, I would like to point out that the U.S. Supreme Court has established a two-part test to determine if a federal law impliedly preempts a local government regulation: (1) Is compliance with both federal and local law impossible? and (2) Does the local law impede congressional objectives? See *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978).

A federal statute may also expressly preempt a local ordinance where the act on its face, and by its explicit language, supersedes any inconsistent local regulation.

The U.S. Supreme Court has also held that federal environmental statutes set minimum standards that must be met by a state or local government while permitting the local governments to enact more stringent regulations. In *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978), the Court stated that Congress intended the Resource Conservation and Recovery Act of 1976 (RCRA) to allow state, regional and local authorities to control the collection and disposal of solid waste as one of their primary functions. The Court further found

that the RCRA contained "no clear and manifest purpose of Congress to preempt the entire field of interstate waste management." *Id.* at 620. Furthermore, in *Ensco, Inc. vs. Dumas*, 807 F.2d 743 (8th Cir., 1986), the federal court held that states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The applicant in the instant case complains that the elements of the definitions of the terms "Infectious Waste", "Hospital Waste" and "Dangerous Waste" in the Morrisville ordinance are substantially different from those contained in 49 CFR §§ 173.134(a)(4) and 173.197. A closer look reveals that this is simply not true. (Also, it must be pointed out that 49 CFR § 173.197 deals exclusively with waste packaging and contains no definitions).

Morrisville ordinance	49 CFR 173.134(a)(4)
1. "any disease producing micro-organism or material".	1. "a viable micro-organism, or its toxin, that causes or may cause disease in humans or animals"
2. "generated by hospitalized patients [with] severe and communicable diseases".	2. "an infectious substance * * * generated in the diagnosis, treatment or immunization of human beings or animals"
3. "[a]ll cultures and stocks of etiologic agents".	3. "infectious substances and etiologic agents"
4. "[a]ll waste blood and blood products" "[t]issues, organs, body parts, blood and body fluids".	4. "excreta, secreta, blood, blood components, tissue, and tissue fluids"
5. "wastes that were in contact with pathogens in any type of laboratory work".	5. "waste or reusable material * * * that contains an infectious substance"
6. "waste biologicals (e.g., vaccines)".	6. "biological products"

The applicant's contention that Morrisville borough's use of the word "Dangerous" conflicts with 49 CFR § 173.124(c) is similarly misguided. The federal regulation cited deals with "dangerous when wet material" (emphasis added) and is inapposite to the Morrisville Borough ordinance.

Applicant also claims that the Morrisville ordinance should be preempted because it requires drivers to carry written manifests when hauling "Dangerous Wastes" (as defined in the ordinance) while federal law only requires manifests if the cargo is "Hazardous Waste" (as defined in 40 CFR § 261.3). While the Morrisville ordinance may be different from the federal regulation, it certainly does not render the applicant's ability to comply with 40 CFR § 261.3 impossible, nor does it impede the objectives of the federal law.

Finally, the applicant argues that the route restrictions contained in the Morrisville ordinance are violative of 49 U.S.C. § 31114, prohibiting interference with access to the interstate highway system. I can say, with all assuredness, that no interstate highways traverse the Borough of Morrisville. However, the availability of U.S. Route 1 to the applicant has not been restricted. 49 U.S.C. § 5112, cited by the applicant, appears to give the states the right to designate specific highway routes over which hazardous material may and may not be transported by motor vehicle. In Pennsylvania, this right is further delegated to counties and municipalities by section 304 of the Municipal Waste, Planning, Recycling and Waste Reduction Act, 53 Pa. C.S.A. § 4000.304.

The Morrisville ordinance provides standards for the transportation of hazardous waste within the borough which are different, though no less stringent than federal regulations. 49 U.S.C.S. § 5101 states that the purpose of the chapter is "to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulation and enforcement authority of the Secretary of Transportation." Morrisville Ordinance No. 902 espouses the same concern for the "health, safety and general welfare of its residents." The ordinance in question breaks no new legislative ground regarding the transportation of hazardous waste but only serve to clarify and specify areas already addressed by federal law. Therefore, the two-part preemption test is not satisfied.

49 U.S.C.S. § 5125 clearly states the criteria by which a local hazardous waste ordinance will be evaluated for the purpose of determining whether it is preempted. Section 5125(a) states that a "requirement of a [local government] is preempted if complying with the requirement of the \* \* \* political subdivision \* \* \* and a requirement of this chapter \* \* \* is not possible." Nothing in the Morrisville ordinance prevents any hauler of dangerous waste to comply with any of the provisions of the federal statutes or any of the rules that have been promulgated in furtherance of environmental legislation. Section 5125(b) states that no local ordinance may be substantively different from federal regulations. The definitions espoused by the Morrisville ordinance and the federal statutes address essentially the same types of materials.

Sincerely,

Stephen L. Needles,  
Stuckert and Yates.

cc: Ross M. Johnston,  
Gary P. Lightman,  
George Mount, Manager  
[FR Doc. 00-9257 Filed 4-13-00; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 145X)]

#### Union Pacific Railroad Company— Abandonment Exemption—in Stanislaus County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 5.62-mile line of railroad over the Tidewater Subdivision from milepost 26.43 near McHenry to milepost 32.05 in Modesto, in Stanislaus County, CA.<sup>1</sup> The line traverses United States Postal Service Zip Codes 95350 through 95356.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line;<sup>2</sup> (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

<sup>1</sup> UP states that it had authority to abandon the line between mileposts 27 and 30 pursuant to a joint relocation project with the Southern Pacific Transportation Company that was the subject of a notice of exemption in *Union Pacific Railroad Company and Southern Pacific Transportation Company—Joint Relocation Project Exemption*, Finance Docket No. 32086 (ICC served June 30, 1992), but that the abandonment authority was never exercised.

The City of Modesto (City) filed a request for issuance of a notice of interim trail use (NITU) for a portion of the right-of-way between milepost +26.43 and milepost +30.63 pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the City's trail use request and any others that may be filed in a subsequent decision.

<sup>2</sup> UP states that in connection with track construction in downtown Modesto, it plans to temporarily detour some overhead traffic over the line for approximately one week beginning on or about April 14, 2000. UP states that the detour is necessary to maintain access to the Modesto & Empire Traction line between Modesto and Empire, CA.

employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 16, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>3</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>4</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 24, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 4, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James P. Gatlin, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 19, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation

<sup>3</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>4</sup> Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

by April 14, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 00-9242 Filed 4-13-00; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB-33 (Sub-No. 70)]

#### Union Pacific Railroad Company— Abandonment—Wallace Branch, ID

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of availability of final supplemental environmental assessment.

**SUMMARY:** The Surface Transportation Board's (Board's) Section of Environmental Analysis (SEA) has prepared a Final Supplemental Environmental Assessment (Final Supplemental EA) to complete the environmental review process under the National Environmental Policy Act (NEPA) for this rail abandonment proceeding.

**FOR FURTHER INFORMATION CONTACT:** Dana White, (202) 565-1552 (TDD for the hearing impaired 1-800-877-8339). To obtain a copy of the Final Supplemental EA, contact Da-To-Da Office Solutions, 1925 K Street, NW., Washington, DC 20006, phone (202) 466-5530 or visit the Board's website at "WWW.STB.DOT.GOV".

**SUPPLEMENTARY INFORMATION:** This Final Supplemental EA addresses the Union Pacific Railroad Company's (UP's) filings with the Board on June 18, 1999 and October 19, 1999, of environmental information required to complete the environmental review process in this rail abandonment proceeding in accordance with the Court's decision in *State of Idaho v. ICC*, 35 F.3d 585 (D.C. Cir. 1994). UP now seeks final approval to salvage (*i.e.*, remove the tracks, ties, and roadbed) the rail lines known as the Wallace-Mullan Branches (Wallace Branch) in Benewah, Kootenai and Shoshone Counties, Idaho outside of the Bunker Hill Superfund Site (BHSS).<sup>1</sup>

<sup>1</sup> The 71.5-mile line extends from milepost 16.5 near Plummer, to milepost 80.4, near Wallace, and

To meet its obligations under NEPA, SEA completed an independent review of the material submitted by UP and on January 7, 2000 issued a Draft Supplemental EA for public review and comment. The Draft Supplemental EA addressed environmental information and evaluated (1) Whether the six environmental conditions previously imposed by the Interstate Commerce Commission (ICC)<sup>2</sup> were met and (2) whether the environmental concerns regarding salvage activity raised during the course of the environmental review process had now been appropriately addressed and resolved. The document also contained SEA's preliminary recommendations for mitigating the potential environmental impacts from salvage activity that have been identified.

SEA received nine comments on the Draft Supplemental EA, including generally favorable comments urging that the Board grant UP final salvage authority submitted by EPA, the State of Idaho, the Coeur d'Alene Tribe, through whose reservation the line passes, and UP. The Final Supplemental EA presents the agency and public comments that SEA received on the Draft Supplemental EA and SEA's response to those comments. It summarizes the environmental review that has taken place in this case and recommends final environmental mitigation measures for the Board to impose if it decides to approve salvage of the line. The Final Supplemental EA fully adopts and incorporates the analysis and conclusions in the Draft

then to milepost 7.6, near Mullan, in Benewah, Kootenai, and Shoshone Counties, Idaho. The line traverses the U.S. Postal Service zip codes 83851, 83861, 83833, 83810, 83839, 83837, 83846, and 83846. The Wallace Branch no longer has stations because rail service has already been discontinued. The 7.9-mile section of right-of-way within the BHSS was addressed in the BHSS Record of Decision (EPA 1992) and is not part of the salvage proposal before the Board. Section 121(e)(1), of the Comprehensive Environmental Response, Compensation and Liability (CERCLA), 42 U.S.C. 9261(e)(1), relieves UP of the requirement to obtain Board approval to remove track within the BHSS if it is done in connection with remediation actions carried out in compliance with CERCLA. Pursuant to Section 121(e) of CERCLA, UP removed track within the BHSS in connection with remediation actions carried out in compliance with CERCLA. UP has not, by undertaking such remediation, or by any other action, abandoned any portion of the Wallace Branch including the portion within the BHSS.

<sup>2</sup> The ICC Termination Act of 1995 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and established the Board to assume some regulatory functions involving rail transportation matters that the ICC had administered, including the functions involving the abandonment of rail service at issue here. The ICC's six environmental conditions required consultation and possible permitting and review by appropriate agencies with specialized expertise prior to any salvage activity on this line.

Supplemental EA, subject to certain factual and technical changes made as a result of the comments, and a modified historic preservation condition.

In the Final Supplemental EA, SEA concludes that the material provided by UP was sufficient to satisfy five of the six environmental conditions imposed by the ICC to ensure that, prior to salvage of the line, the potential significance of environmental effects related to the proposed track salvage will have been properly evaluated.<sup>3</sup> Furthermore, SEA concludes, based on the available information and the input of other agencies and government entities with specialized expertise, that if UP complies with the mitigation in the Engineering Evaluation/Cost Analysis and the Track Salvage Work Plan that were issued and approved by EPA, and the Biological Assessment prepared by UP and approved by the U.S. Fish and Wildlife Service, and if the additional mitigation SEA has recommended is imposed and implemented by UP, UP's proposal to salvage the Wallace Branch would not have significant adverse environmental impacts. Therefore, the preparation of an environmental impact statement is not warranted.

The Board will consider the entire environmental record, the Draft Supplemental EA, the Final Supplemental EA, and all public comments before issuing a decision either granting or denying UP final authority to salvage the portion of the Wallace Branch outside of the BHSS. In that decision, if UP's proposal is approved, the Board will impose any environmental conditions it deems appropriate.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 00-9243 Filed 4-13-00; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 4, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

<sup>3</sup> The only condition that has not yet been satisfied is the ICC's Environmental Condition No. 6, involving historic preservation. SEA recommends that the Board impose a modified historic preservation condition on any decision approving salvage to ensure completion of the historic review process.

Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:**

Written comments should be received on or before May 15, 2000, to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* New.

*Form Number:* None.

*Type of Review:* New collection.

*Title:* Wage and Investment Taxpayer Prefiling and Filing Burden Study.

*Description:* This study is designed to collect the amount of time and money Wage & Investment taxpayers incur as a result of the Federal income tax law and regulations. This new method will be a valuable tool in the IRS's ongoing effort to improve customer service, as well as for policy makers to understand the full effect of tax law changes. In particular, it will help the IRS understand the burdens placed on its customers by the Federal tax system—its laws, its administration, and changes to those factors.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 8,300.

*Estimated Burden Hours Per Respondent:* 20 minutes (for completed interviews).

*Frequency of Response:* Other (One-Time).

*Estimated Total Reporting Burden:* 2,230 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; phone: (202) 395-7860.

**Mary A. Able,**

*Departmental Reports Management Officer.*

[FR Doc. 00-9338 Filed 4-13-00; 8:45 am]

**BILLING CODE 4830-01-U**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties**

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning April 1, 2000, the interest rates for overpayments will be 8 percent for corporations and 9 percent for non-corporations, and the interest rate for underpayments will be 9 percent. This notice is published for the convenience of the importing public and Customs personnel.

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

**FOR FURTHER INFORMATION CONTACT:**

Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298-1200, extension 1349.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on

applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations. The interest rate applicable to underpayments is not so bifurcated.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2000-16 (*see*, 2000-12 IRB 780 dated March 20, 2000), the IRS determined the rates of interest for the third quarter of fiscal year (FY) 2000 (the period of April 1—June 30, 2000). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (6%) plus three percentage points (3%) for a total of nine percent (9%). For corporate overpayments, the rate is the Federal short-term rate (6%) plus two percentage points (2%) for a total of eight percent (8%). For overpayments made by non-corporations, the rate is the Federal short-term rate (6%) plus three percentage points (3%) for a total of nine percent (9%). These interest rates are subject to change for the fourth quarter of FY-2000 (the period of July 1—September 30, 2000).

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1-1-99) (percent)
Prior to—				
070174 .....	063075	6	6	.....
070175 .....	013176	9	9	.....
020176 .....	013178	7	7	.....
020178 .....	013180	6	6	.....
020180 .....	013182	12	12	.....
020182 .....	123182	20	20	.....
010183 .....	063083	16	16	.....
070183 .....	123184	11	11	.....
010185 .....	063085	13	13	.....
070185 .....	123185	11	11	.....

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1-1-99) (percent)
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	063000	9	9	8

Dated: April 10, 2000.

**Raymond W. Kelly,**

*Commissioner of Customs.*

[FR Doc. 00-9322 Filed 4-13-00; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**Customs Contact for Y2K Failures**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** Under the Y2K Act, each executive agency of the United States that has the authority to impose civil penalties on small business concerns is required to establish a point of contact to act as a liaison between the agency and small business concerns regarding problems experienced by small business concerns resulting from the transition of computer programs, devices, and systems from the year 1999 to the year 2000. Small business concerns may contact the agency, through the agency point of contact, with regard to Y2K transition problems and compliance with Federal rules or regulations. This document announces the contact person established by Customs for that purpose.

**FOR FURTHER INFORMATION CONTACT:** Eula Walden, Deputy Trade Ombudsman, (202) 927-1440.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 20, 1999, the Y2K Act (Pub. L. 106-37; 113 Stat. 185) (the Act) was signed into law. Section 18 of the Act, codified at 15 U.S.C. 6617, provides that each executive agency of the United States that has the authority to impose civil penalties on small business concerns is required to establish a point of contact to act as liaison between the agency and those small business concerns. Small business concerns may contact the agency liaison with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. (See 15 U.S.C. 6617(b).)

Generally, problems arising out of Y2K failures are problems experienced by small business concerns that result from the failure of any computer program, device, system (including any computer system, computer microchip, or integrated circuit embedded in another device), software, firmware, or other set or collection of processing instructions caused by the transition from the year 1999 to the year 2000. (See 15 U.S.C. 6602(2).) Under the Act, a small business concern facing a penalty for a first-time violation of a Federal rule or regulation caused by a Y2K failure may obtain a waiver of that penalty upon meeting certain requirements, one of which is to report the first-time violation to the appropriate agency within 5 business days of its discovery by the small business concern. (See 15 U.S.C. 6617(d).)

This document, in accordance with 15 U.S.C. 6617(b)(2), announces the identity of the Customs point of contact who will serve as liaison between the agency and small business concerns. Small business concerns may contact Mr. Joseph M. Rees, Trade Ombudsman for the United States Customs Service, for purposes of addressing problems arising from Y2K failures and compliance with Federal rules or regulations. The telephone number for Mr. Rees is 202/927-1440.

Dated: April 10, 2000.

**Joseph M. Rees,**

*Trade Ombudsman, Office of the Trade Ombudsman.*

[FR Doc. 00-9321 Filed 4-13-00; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Advisory Committee for Electronic Tax Administration**

**AGENCY:** Internal Revenue Service (IRS).  
**ACTION:** Request for nominations.

**SUMMARY:** The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development and implementation of the Internal Revenue Service' (IRS') strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax

administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Assistant Commissioner (Electronic Tax Administration) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12)

state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of Treasury, and Congress. Members will be limited to serving one two-year term on the ETAAC to ensure that new perspectives and ideas are generated by the members. All travel expenses within government guidelines will be reimbursed.

**DATES:** Written nominations must be received on or before May 15, 2000. **Addresses:** Nominations should be sent to Robin Marusin, OP:ETA, Room 7331 IR, 1111 Constitution Ave., NW, Washington, DC 20224. Application forms can be obtained from Robin Marusin, who can be reached on (202) 622-8184.

**FOR FURTHER INFORMATION CONTACT:** Robin Marusin, 202-622-8184.

**SUPPLEMENTARY INFORMATION:** The ETAAC will provide continued input into the development and implementation of the IRS' strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements.

This activity is based on the authority to administer the Internal Revenue laws

conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue.

The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administrations issues and will provide input into the development and implementation of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

**Robert E. Barr,**

*Assistant Commissioner, Electronic Tax Administration.*

[FR Doc. 00-9379 Filed 4-11-00; 4:06 pm]

**BILLING CODE 4830-01-P**



# Federal Register

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**Friday,  
April 14, 2000**

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**Part II**

## **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**15 CFR Part 930  
Coastal Zone Management Act Federal  
Consistency Regulations; Proposed Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 930****[Docket No. 990723202-9202-01]****RIN 0648-AM88****Coastal Zone Management Act Federal Consistency Regulations**

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing to revise the federal consistency regulations under the Coastal Zone Management Act of 1972 (CZMA). The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, as well as the Coastal Zone Protection Act of 1996, enacted June 3, 1996, amended and reauthorized the CZMA. Among the amendments were revisions to the federal consistency requirement contained in section 307 of the CZMA. Current federal consistency regulations were promulgated in 1979 and are in need of revision after 18 years of implementation. The purpose of this proposed rule is to make these revisions and to codify the 1990 and 1996 statutory changes to section 307.

**DATES:** Comments on the proposed rule are invited and will be considered if submitted on or before May 30, 2000.

**ADDRESSES:** All comments concerning these proposed regulations should be mailed to: Joseph A. Uravitch, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** David W. Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Telephone: 301-713-3098, extension 144.

**SUPPLEMENTARY INFORMATION:****I. Authority**

This proposed rule is issued under the authority of the CZMA, 16 USC 1451 *et seq.*

**II. Background**

The CZMA was enacted to develop a national coastal management program that comprehensively manages and balances competing uses of and impacts to any coastal use or resource. The national coastal management program is implemented by individual state coastal management programs in partnership with the Federal Government. The CZMA federal consistency requirement, 16 USC 1456, requires that Federal agency activities be consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program. The federal consistency requirement also requires that indirect federal activities (i.e., non-federal activities requiring federal permits, licenses or financial assistance activities) be fully consistent with a state's federally approved coastal management program. The federal consistency requirement is an important mechanism to address coastal effects, to ensure adequate federal consideration of state coastal management programs, and to avoid conflicts between states and Federal agencies by fostering early consultation and coordination.

Congress strongly re-emphasized the importance of consistency in the CZMA amendments of 1990 and specifically endorsed long-standing requirements of the CZMA consistency regulations. Thus, in making proposed regulatory changes NOAA has been careful to adhere to statutory requirements and has given deference to the long-standing consistency provisions that are consistent with new statutory requirements. The implementation of consistency by the states and federal agencies and guidance by NOAA, especially in the past few years, for the most part has been based on reasonableness, objectivity, collaboration and cooperation. The strength of revised regulations and state-federal interaction needs to further these goals and be solidly grounded in the statute and long-standing usage. With that in mind, aside from the proposed revisions required by the changes to the CZMA, it is not NOAA's intent to fundamentally change or "weaken" the consistency requirement. NOAA's intent is to clarify certain sections, provide additional guidance where needed, and provide states and federal agencies with greater flexibility for federal-state coordination and cooperation. Hopefully, the spirit of objective, collaborative, open and amicable interaction with the coastal states, federal agencies and NOAA will continue.

**III. Coastal Zone Act Reauthorization Amendments of 1990**

This proposed rule codifies changes made to section 307 of the CZMA in 1990. The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) (Pub. L. 101-508) amended the CZMA to clarify that the federal consistency requirement applies when any federal activity, regardless of location, affects any land or water use or natural resource of the coastal zone. This new "effects" language was added by the CZARA to replace previous language that referred to activities "directly affecting the coastal zone," establishing:

a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to [the consistency requirement] if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 968-975, 970 (hereinafter Conference Report). The focus of the Federal agency's evaluation should be on coastal effects, not on the nature of the activity. The Conference Report provides further clarification on the scope of the effects test:

The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

*Id.* at 970-71. These changes reflect an unambiguous Congressional intent that all Federal agency activities meeting the "effects" test are subject to the CZMA consistency requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the "uniform threshold standard" requires a factual determination, based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis. *Id.* at 970-71; 136 Cong. Rec. H 8076 (Sep. 26, 1990).

Other changes made to the CZMA by the CZARA include the addition of section 307(c)(1)(B) which, under certain circumstances, authorizes the President to exempt a specific Federal agency activity if the President determines that the activity is in the paramount interest of the United States.

This section does not require implementing regulations. The CZARA also makes clear the requirement that Federal agency activities and federal license or permit and federal assistance activities must be consistent with the enforceable policies of state coastal management programs. Finally, the CZARA made technical and conforming changes to the other existing federal consistency requirements of CZMA sections 307(c)(3) (A) and (B), and 307(d) for the purpose of conforming these existing sections with changes made to section 307(c)(1).

#### IV. CZARA and *Secretary of the Interior v. California*, 464 U.S. 312 (1984)

In 1984, the Supreme Court held that outer continental shelf (OCS) oil and gas lease sales by the Department of the Interior's Minerals Management Service were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior v. California*, 464 U.S. 312 (1984). In amending the CZMA federal consistency section in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made it clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970. Congress also intended this change to clarify that other federal activities (in or outside the coastal zone) in addition to OCS oil and gas lease sales are subject to the federal consistency requirement. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H8068 (Sep. 26, 1990) [hereinafter Congressional Record] (incorporated into the Conference Report, see Conference Report at 975).

Changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably foreseeable, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, e.g., activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably foreseeable effects on any coastal use or resource. See Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the*

*Interior*. Congress not only rejected *Secretary of the Interior*, but eliminated the "shadow effect" of the Court's decision (i.e., its potentially erosive effect on the application of the federal consistency requirements to other federal agency activities) \* \* \* and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [i.e., the effects test] for review." Congressional Record at H8076.

Thus, the application of the consistency requirement is not dependent on the type of activity or what form the activity takes (e.g., rulemaking, regulation, physical alteration, plan). Consistency applies whenever a federal activity initiates a series of events where coastal effects are reasonably foreseeable. See H.R. Rep. No. 1012, 96th Cong., 2d Sess. at 4382. The CZMA, the Conference Report, and NOAA regulations are specifically written to cover a wide range of federal functions. The only test for whether a Federal agency function is a federal activity subject to the consistency requirement is an effects test. Whether a particular federal action affects the coastal zone is a factual determination.

#### V. Coastal Zone Protection Act of 1996

On June 3, 1996, the President signed into law the Coastal Zone Protection Act of 1996 (CZPA), Pub. L. No. 104-150. Section 8 of the CZPA addresses the Secretarial override process whereby the Secretary of Commerce may override a state's consistency objection to a federal permit, license or funded project. Specifically, CZPA section 8 provides that the Secretary shall publish a notice in the **Federal Register** indicating when the decision record in a consistency appeal has closed. No later than 90 days after the date of publication of this notice, the Secretary shall issue a final decision or publish another notice in the **Federal Register** detailing why the decision cannot be issued within the 90-day period. In the latter case, the Secretary shall issue a decision no later than 45 days after the date of the publication of the notice. This proposed rule makes conforming changes in the Secretarial override regulations contained in subpart H of part 930.

#### VI. Purpose of This Proposed Rulemaking

The purpose of this proposed rule is to codify the 1990 and 1996 statutory changes to section 307 of the CZMA, and to update the federal consistency regulations after 18 years of implementation by NOAA, states and Federal agencies. This proposed rule is

also the result of a two year informal effort by NOAA to work with Federal agencies, state coastal management programs and other interested parties to identify issues and obtain comments on draft proposed revisions to the regulations. Thus, this proposed rule has already undergone substantial review by Federal agencies, states and other interested parties.

#### VII. Section-by-Section Discussion of Proposed Changes

Throughout part 930 NOAA proposes to make a number of minor revisions, as well as a number of revisions that will implement the CZARA and the CZPA. The minor revisions include changes that will update the regulations and make them easier to use. The following is a section-specific discussion of some of these proposed changes, as well as proposed changes that will implement the CZARA and the CZPA. Because of the number of changes to the consistency regulations, the federal consistency regulations are being issued in this **Federal Register** notice in its entirety.

The following terms are defined for the purpose of this preamble:

The term "management program" means the objectives, policies and other requirements of a state coastal management program that has been federally approved by NOAA, pursuant to CZMA section 306.

The "State agency" is the designated federal consistency agency for a particular state management program.

The term "consistency determination" means the determination provided by a Federal agency to a State agency for a federal activity under CZMA section 307(c)(1) that the Federal agency determines will have reasonably foreseeable effects on any land or water use or natural resource of a state's coastal zone (such effects are also referred to as "coastal effects" or "effects on any coastal use or resource").

The term "negative determination" means the determination provided by a Federal agency to a State agency for a federal activity under CZMA section 307(c)(1) that the Federal agency determines will not have reasonably foreseeable coastal effects.

The term "consistency certification" means the certification provided by an applicant for a federal approval under CZMA section (c)(3) or a state agency's or local government's certification under CZMA section 307(d).

The term "concurrence" means a State agency's approval of a consistency determination, negative determination, or consistency certification.

The term "objection" means a State agency's disagreement/disapproval of a consistency determination, negative determination, or consistency certification.

The term "enforceable policy" means a policy that is legally binding under state law and is part of a state's management program.

The term "maximum extent practicable" means that Federal agencies must conduct their activities under CZMA section 307(c)(1) in a manner that is fully consistent with the enforceable policies of a state's management program, unless prohibited from full consistency by the requirements of federal law applicable to the activity.

#### *Subpart A—General Information*

Minor changes are proposed to clarify that the obligations imposed by the regulations are for states as well as for Federal agencies and other parties, and to clarify that the purpose of the regulations is to address both the need to ensure consistency of federal actions affecting any coastal use or resource with approved coastal management programs and the importance of federal programs. Changes are proposed to encourage states and Federal agencies to coordinate as early as possible, and to allow states and Federal agencies to mutually agree to consistency procedures different from those contained in the regulations (providing that public participation requirements are still met and that all relevant state coastal management program enforceable policies are considered). Proposed minor editorial changes are not individually identified in the section-by-section analysis.

Sections 930.1(h) and (i) are proposed to be removed. *See* below under sections 930.132–134, and subpart I.

Section 930.2 would codify the requirement for public participation for all types of consistency reviews which was added by CZARA, 16 U.S.C. 1455(d)(14) (CZMA § 306(d)(14)).

Section 930.3 was formerly located at section 930.145.

Section 930.4 would clarify the use by State agencies of conditional concurrences. The Act's consistency requirements impose a definite time by which a Federal agency or an applicant for a federal approval or financial assistance (and the approving Federal agency) know if the State agency has concurred with a proposed activity, and whether the federal approval or funding may be issued. Conditions of concurrence should not replace state objections and the identification of alternatives for activities that the State

agency finds are inconsistent with its management program. Since conditional concurrences could seriously weaken the state leverage granted by the CZMA consistency requirement, the proposed rules would only allow conditional concurrences pursuant to the following criteria: (1) Conditions must be based on specific enforceable policies, (2) the applicant must amend its federal application, and (3) the Federal agency approves the application as amended with the state conditions. If all of these requirements are not met, then the conditional concurrence is an objection.

Section 930.5 would be added to clarify that the mediation and negotiation sections of the regulations do not preclude other state enforcement actions where the state has jurisdiction or believes it is necessary to take enforcement or judicial action.

Section 930.6 would move the non-definitional parts of § 930.11(o) (formerly § 930.18) to a section describing the responsibilities of the State agency. Section 930.6(a) would acknowledge that a state may have two separate coastal management programs (for distinct regions) and thus, two separate federal consistency agencies. Currently, California has two programs (the California Coastal Commission and the San Francisco Bay Conservation and Development Commission).

Section 930.6(b) would be revised to simplify consistency terminology. At present, different terms are used to describe state responses for Federal agency activities ("agreement or disagreement") and federal license or permit activities ("objection or concurrence"). As proposed, a state would either object to or concur with a consistency determination or a consistency certification.

Section 930.6(c) would be added to clarify the role of the single State agency for coordinating federal actions and the State agency's responsibility to apply all relevant enforceable policies when conducting consistency reviews. The requirement that a single State agency ensure that all relevant enforceable policies are considered under state federal consistency reviews is derived from CZMA section 307 and various sections of NOAA's regulations. The CZMA requires compliance with all relevant enforceable policies of a "management program" and not a subset thereof. *See, e.g.,* CZMA §§ 307(c)(3)(A), 304(12). A major criterion for coastal management program approval is a determination that state agencies responsible for implementing the coastal management program do so in conformance with the policies of the management program. 15

CFR 923.40(b). *See* also 15 CFR 923.41(b)(2). Networked state coastal management programs must also demonstrate that coastal management program authorities implement the full range of policies. 15 CFR 923.43(c). The federal consistency regulations mirror the requirement for the application of enforceable policies in a comprehensive manner.

#### *Subpart B—General Definitions*

The definitions have been re-designated to reduce the total number of regulation sections. There is now just a section 930.10 for the index and a section 930.11(a) through (o) for the definitions contained in subpart B.

Section 930.11(d) would be amended to clarify that associated facilities are indispensable parts of the proposed federal action. A variant of the proposed addition was previously a comment to the 1979 regulations. 44 FR 37145. This addition ensures that the State agency would have sufficient information to fulfill its coastal planning and management responsibilities, and the proponent of the federal action would not be faced with the situation where there has been receipt of State agency approval regarding one element of the project with later objection to an associated facility which was not earlier reviewed with the remainder of the proposal.

Sections 930.11(b) and (g) would define "any coastal use or resource" and "effect on any coastal use or resource," respectively. These proposed terms are not intended to alter the statutory requirement which refers to any land or water use or natural resource of the coastal zone. These terms are merely a simpler description of the statutory requirement. The definition for coastal uses and resources is derived primarily from CZMA Section 304 (coastal resources of national significance are defined in CZMA Section 304(2)). Not all coastal uses or resources can be added. The list is not exclusive, but is meant to highlight the more common uses or resources. The term "minerals" has been added to include both surface and subsurface mineral resources. Aesthetics and scenic qualities are not natural resources, but are enjoyment or use of natural resources. These concepts have been added to the definition of coastal use. Land has been added to natural resource. A sentence has also been added to include coastal uses and resources detailed in a state's management program. Resource creation or restoration projects has been added as a coastal use. This will include tidal and nontidal restoration and creation projects. Air and invertebrates have

been added as natural resources. Since historic and cultural resources are important coastal resources under the CZMA (see sections 302(e), 303(2) and 303(2)(F)), the protection of historic and cultural resources of the coastal zone is included in the examples of coastal uses. Coastal effects are to be construed broadly and include reasonably foreseeable and cumulative and secondary effects. See Conference Report at 970–71. Whether consistency applies is not dependent on the type of federal activity, but on reasonably foreseeable coastal effects. For example, a planning document or regulation prepared by a Federal agency would be subject to the federal consistency requirement if coastal effects from those activities are reasonably foreseeable.

Again, the application of consistency is not limited by the geographic location of a federal action; consistency applies if there are reasonably foreseeable coastal effects resulting from the activity. A federal action occurring outside the coastal zone may cause effects felt within the coastal zone (regardless as to the location of the affected coastal use or resource). For example, a state's fishing or whale watching industry (which are coastal uses) could be affected by federal actions occurring outside the coastal zone. Thus, the effect on a resource or use while that resource or use is outside of the coastal zone could result in effects felt within the coastal zone. However, it is possible that a federal action could temporarily affect a coastal resource while that resource is outside of the coastal zone, e.g., temporary harassment of a marine mammal, such that resource impacts are not felt within the coastal zone. As stated above, the coastal effects test is a fact-specific inquiry. NOAA is not further defining "reasonably foreseeable." Congress envisioned that federal-state coordination through consistency would be interactive. Thus, the application of consistency, the varied state coastal management programs, the analysis of effects, and the case-by-case nature of federal consistency precludes fast and hard definitions of effects and what is reasonably foreseeable.

Section 930.11(h) would be added to define enforceable policy by reference to CZMA § 304(6a), and to clarify that an enforceable policy must be sufficiently comprehensive and specific to control coastal uses while not necessarily inflexibly committing the state to a particular path. See *American Petroleum Institute v. Knecht*, 456 F. Supp. 889, 919 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979); 15 CFR 923.40(a); Conference Report at 972.

#### Subpart C—Consistency for Federal Agency Activities

Throughout the proposed regulations the phrase "directly affecting the coastal zone" has been changed to read "affecting any coastal use or resource." This codifies changes made to the CZMA by CZARA and includes reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.

In section 930.30 NOAA proposes to delete "conducted or supported" to conform this section with changes made by CZARA. In addition the title of subpart C and throughout subpart C, the term "Federal activity" is changed to "Federal agency activity" to avoid confusion with federal activities under subparts D, E, and F. The phrase Federal agency activity is taken directly from the CZMA.

NOAA proposes to amend section 930.31(a) to further describe the scope of the federal consistency effects test by clarifying the term "functions." This language is derived from the CZMA's legislative history.

Section 930.31(d) would be added to clarify that CZMA section 307(c)(1) is a residual category. Federal actions that do not fall into subparts D, E, or F are Federal agency activities. CZMA section 307(c)(1)(A); see 44 FR 37146.

Section 930.31(e) would address the hybrid nature of general permit programs developed by Federal agencies. This occurs when a Federal agency proposes to replace the need for an applicant to obtain an individual permit with a general set of requirements which, if met by the applicant, would allow the applicant to proceed with the activity without a case-by-case approval by the Federal agency. Two examples are the Corps' Nation-wide Permit (NWP) program under the Clean Water Act section 404 and the Environmental Protection Agency's (EPA's) general National Pollutant Discharge Elimination System (NPDES) permits for discharges from OCS oil and gas facilities. The development of the general permit program is best thought of as a Federal agency activity. Even though a general permit will authorize license or permit activities, the development of the federal requirements is an action by a Federal agency, not an applicant. Moreover, there is not a discreet federal or license permit activity to review and there is not an applicant. Neither the statute nor the regulations contemplated the hybrid nature of general permits. CZMA section 307(c)(1)(A) does provide that a Federal agency is subject to section 307(c)(1) unless it is subject to

paragraph (2) or (3) (license or permit activities). However, this does not resolve the matter since § 307(c)(3) does not imply or anticipate a situation where a Federal agency is an applicant for its own approval and for general permits, the Federal agency is not actually undertaking the license or permit activity covered by the general permit. Federal agencies may of course choose to subject their general permit programs to CZMA section 307(c)(3)(A).

NOAA proposes amending section 930.32 to clarify the consistent to the maximum extent practicable standard. NOAA proposes to divide section 930.32(a) into 3 subsections. Subsections (1) and (2) are the existing regulations and subsection (3) is new. Minor changes are proposed for § 930.32(a)(1) and the last sentence in (a)(1) is moved to the end of (a)(2). These changes are made for clarity and brevity; there are no substantive changes in subsections (a) (1) and (2). The term "discretion" as included in the existing regulations and retained in the revised regulations means that the more discretion a Federal agency has under its legal requirements, the more the Federal agency must be consistent with the state's enforceable policies. In subsection (a)(2), NOAA proposes to delete the term "supplemental" since the CZMA requires that a state's enforceable policies are requirements, not supplemental requirements. Also, supplemental is somewhat redundant with the rest of the sentence.

Section 930.32(a)(3) would clarify the effect of federal appropriations law on the consistent to the maximum extent practicable standard. A general lack of funding cannot be a reason to conduct a federal activity that is not consistent with state management program enforceable policies. In order for federal law to prohibit Federal agencies from being consistent there must be specific limitations in federal acts. Problems arise if Federal agencies were to use dollar amounts specified in appropriations acts as part of the consistent to the maximum extent practicable equation. These problems are: (1) The CZMA Presidential exemption includes the only express exemption due to lack of appropriations; (2) appropriations acts often provide little guidance as to how funds are to be used; and (3) state enforceable policies are substantive requirements to be adhered to. State coastal management program enforceable policies are, in most cases, in place long before the planning of many federal projects and in advance of budgeting for annual appropriations. A Federal agency cannot avoid any state

requirement that it finds burdensome simply by not funding the required action. Advance planning and early coordination can help alleviate these concerns. If Federal agencies know what the state's enforceable policies are then costs can be factored into an agency's planning. Also, just as Federal agencies cannot avoid other federal and state law requirements (e.g., under the Clean Water or Air Acts, NEPA) due to funding constraints, they cannot avoid state enforceable policies. State enforceable policies are developed pursuant to the CZMA, approved by the federal government, and applicable to Federal agencies through the CZMA federal consistency requirement.

Section 930.32(b) would be revised to clarify that in unforeseen cases, such as an emergency, the Federal agency must still adhere to the consistency requirements, to the extent that exigent circumstances allow. For example, a Federal agency, responding to an emergency, must still provide a consistency determination to the State agency, if time allows. If the time frame for responding to an emergency is too short for a consistency determination, the Federal agency should coordinate with the State agency to the extent possible. To avoid uncertainty in these instances, the Federal agency and State agency may mutually agree to emergency response planning prior to an actual emergency, or develop expedited procedures or a general review for reasonably foreseeable emergency situations and activities. The phrase "exigent circumstances" is used for emergency actions since many agencies respond to emergencies, but they may not be mandated by law to respond within a certain time frame. Thus, their rapid response is determined by the emergency, not their discretionary authority.

Section 930.32(c) would address national security activities that are "classified." The 1990 changes to the CZMA make it clear that all federal activities are subject to the consistency requirement. Thus, a classified activity that will affect coastal uses or resources is subject to the consistency requirement unless exempted by the President under CZMA section 307(c)(1)(B)). However, under the consistent to the maximum extent practicable standard, the Federal agency need only provide project information that it is legally permitted to release. Despite the fact that a Federal agency may not be able to disclose certain project information, the Federal agency must still conduct the classified activity consistent to the maximum extent practicable with the state management

program. Concerned state management programs may want to consider developing general consistency agreements with relevant Federal agencies for classified activities. The definition of "classified" is adopted from the Freedom of Information Act. Classified information should protect from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order. As of October 14, 1995, the executive order in effect is E.O. 12,958, 3 CFR 333, reprinted in 50 U.S.C. 435 note (1994). Generally, it is preferable, however, not to identify the particular executive order in the regulations, because it may be supplanted by a new order under a new administration and courts have held that agencies should always apply the executive order in effect at the time the classified determination is made—i.e., an agency does not have to go back through all of its old secrets and reclassify them pursuant to the latest executive order.

Section 930.33(a)(1) would clarify that effects on any coastal use or resource are not limited to environmental effects and that a review of relevant state coastal management program enforceable policies is necessary to determine whether the activity will affect any coastal use or resource.

Section 930.33(a)(2) would clarify when federal consistency does not apply to a Federal agency activity. If there are no effects on any coastal use or resource and a negative determination is not required, then the Federal agency need not provide anything to the state.

Section 930.33(a)(3) would provide a process whereby State agencies and Federal agencies can more efficiently address "de minimis" activities. *De minimis* activities cannot be unilaterally excluded from the federal consistency requirement. As the court noted in *Envtl. Defense Fund v. Env'tl. Protection Agency*, 82 F.3d 451 (D.C. Cir. 1996), *modified* by 92 F.3d 1209 (D.C. Cir. 1996), "[t]he ability to create a de minimis exemption is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design. \* \* \* Of course, \* \* \* a de minimis exemption cannot stand if it is contrary to the express terms of the statute." The express terms of the CZMA are that consistency applies to "each" federal activity "affecting" "any" coastal use or resource. Neither the CZMA nor the Conference Report specifically authorize a unilateral de minimis exception.

Further, Congress amended the CZMA in 1990 to specifically guard against Federal agencies exempting their activities. Thus, any attempt to address de minimis activities must be done cautiously. Also, many states are concerned with the cumulative effect of seemingly de minimis activities. NOAA believes, however, that the CZMA allows states and Federal agencies to mutually agree to address de minimis activities in a flexible manner. The proposed revisions do not provide detailed definitions of de minimis activities. Rather, NOAA proposes some general guidelines and then leaves it to the Federal agency and states to agree as to what is de minimis. NOAA is not requiring a State agency to provide for public participation for agreements between a State agency and a Federal agency regarding de minimis activities. An agreement between a State agency and a Federal agency to exclude de minimis activities is not a consistency determination. (If a State agency and Federal agency agree to address de minimis activities through a general determination public participation would be required.) Individual states may of course provide for public participation.

Section 930.33(a)(4) would allow State agencies and federal agencies to mutually agree to exclude environmentally beneficial activities from further State agency review.

Section 930.33(c)(2) would be removed. Outer continental shelf (OCS) oil and gas lease sales are Federal agency activities and are subject to the CZMA consistency requirement. *See* Sections III and IV of this proposed rule. Likewise, pre-lease sale activities are also subject to the consistency requirement if coastal effects are reasonably foreseeable. *See* 44 FR 37154 (comment to § 930.71); Letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Dept. of Justice, to C.L. Haslam, General Counsel, U.S. Dept. of Commerce and Leo M. Krulitz, Solicitor, U.S. Dept. of the Interior (Apr. 20, 1979).

Section 930.33(d) would further clarify the CZMA federal consistency "effects test." Early federal-state coordination is emphasized to reduce conflict, build public support, provide a smooth and expeditious federal consistency review, and to help Federal agencies avoid costly last minute changes to projects in order to comply with state coastal management program enforceable policies. The earlier the coordination, the less likely it is that conflict will arise. Early coordination also enables a Federal agency to address coastal management concerns while the

agency still has the discretion to alter the activity and before substantial resources have been expended.

Section 930.34 would be removed and its contents moved to new section 930.34 and to section 930.36 on consistency determinations.

Section 930.34(a)(2) would encourage Federal agencies and State agencies to use existing procedures to coordinate consistency reviews. However, for permit requirements in state coastal management programs that are not required of Federal agencies by federal law other than the CZMA, the Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied. NOAA has encouraged the practice of state coastal management programs using state permitting procedures as an administrative convenience to process Federal agency consistency determinations under sections 307(c)(1) and (2). This results in efficient state consistency reviews by taking advantage of existing review procedures otherwise applicable to permitting actions. This new section is based on a comment in the original 1979 regulations, 44 FR 37147.

Section 930.34(b) would be moved to section 930.36(b) and amended to clarify that the Federal agency must provide a consistency determination to the state while the Federal agency still has the ability to alter the activity to address state coastal management policies.

Sections 930.34(b)(2) and (c) would be deleted, with parts of these sections moved to new section 930.34(c). These sections are confusing and are not needed, since the listing provision for Federal agency activities is a recommendation and not a requirement and Federal agencies must provide a consistency determination to applicable states for activities with coastal effects regardless as to whether the state has listed the activity.

Section 930.34(d) would encourage Federal agencies to seek assistance from the State agency in its determination of effects and consistency. At a minimum, State agencies must be able to provide Federal agencies with the applicable enforceable policies. Identifying a state's enforceable policies can be difficult. Also, providing the Federal agency with the applicable policies will help focus the Federal agency's efforts on the state's coastal management concerns.

Section 930.35 would apply to negative determinations and clarify existing requirements for negative determinations. Section 930.35(d)(3) is proposed to be deleted since the subsection is not used very often, the

meaning is not clear, it is redundant with subsection (a)(1), and may discourage Federal agencies from taking a hard look at borderline cases.

Section 930.35(b) would clarify the information requirements for a negative determination. A negative determination, by definition, is a finding of no effects. Thus, the information provided for a negative determination may not be as substantial as that provided for a consistency determination.

Section 930.35(c) would clarify that if a state disagrees with a Federal agency's negative determination, it must do so within 60 days or its concurrence is presumed. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations since negative determinations are not consistency determinations as contemplated by the Act. This section also clarifies that, if a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the State agency and Federal agency may agree to an alternative schedule to promote administrative efficiency.

Section 930.36 would be moved to section 930.35(d). Section 930.36 would incorporate existing sections 930.37 and 930.34(b) and elaborate on consistency determinations for proposed activities.

Section 930.36(c) would be amended to clarify the use of general consistency determinations. Federal agencies may provide State agencies with general consistency determinations for repetitive activities in the same manner that they provide single consistency determinations. A general consistency determination is still only allowed in a limited number of cases where the activities are repetitive and do not affect any coastal use or resource when performed separately. NOAA has added greater flexibility for State agencies and Federal agencies to mutually agree to use general determinations for other non-repetitive or other repetitive activities. The primary purpose of a general determination is for repetitive activities. Allowing a Federal agency to unilaterally provide a general determination for non-repetitive activities that have cumulative effects would be inconsistent with the 1990 CZMA changes. A general consistency determination may be used for de minimis activities only when the Federal agency and State agency have mutually agreed to do so. The terms "periodic" and "substantially similar in nature" are proposed to be deleted as the concept of "repetitive" includes these terms.

Section 930.36(e) would describe a method to efficiently address consistency requirements for a federal activity that is national or regional in scope. For example, a federal activity, such as a rulemaking or planning activity, may apply to more than one coastal state where coastal effects are reasonably foreseeable. Providing each state with a separate consistency determination may be difficult, inefficient and not cost effective, even with early coordination. The proposed regulation provides states and Federal agencies with the means to effectively coordinate, ensure adequate consideration of state coastal management programs, and provide an efficient, cost effective and timely method for meeting the consistency requirement.

Section 930.37(c) would be moved to 930.36(d) and amended to clarify that phased consistency determinations refers to development projects and activities. Section 930.37 would clarify coordination of consistency with the use of NEPA documents to address consistency requirements. Federal agencies are not required to address consistency requirements in NEPA documents, but may use NEPA documents, at the Federal agency's discretion, as an efficient and effective mechanism to address the consistency requirements. The use of NEPA documents for consistency purposes does not, however, mean that a NEPA document necessarily satisfies all consistency requirements. The Federal agency must still comply with the applicable sections in 15 C.F.R. part 930, subpart C. Section 930.37 would provide flexibility for states and Federal agencies to agree to different NEPA/consistency review procedures. Coordination between states and federal agencies on federal consistency requirements should occur at an early stage, usually at the draft environmental impact statement (EIS) stage, and before the Federal agency reaches a significant point in its decision making and while the Federal agency still has discretion to modify the activity. A final EIS is a significant point in an agency's decision making and further modifications are much harder to do and require more resources. It is more efficient and in keeping with the intent of consistency for states and federal agencies to coordinate at the draft EIS stage. Arrangements should be made to do supplemental consistency reviews in case the project substantially changes in the final EIS or Record of Decision.

Section 930.39(a) would be amended to clarify that the Federal agency's evaluation of the management program

is included in the consistency determination. The last sentence in subsection (a) is derived from the last sentence of former § 930.34(a).

Section 930.39(b) is proposed to be amended to conform to CZARA. Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if the effects are reasonably foreseeable. The last clause would be deleted since it is inconsistent with CZARA and the effects test and is covered under the proposed new definition of effects.

The last sentence of section 930.39(c) would be deleted since it is redundant with the rest of section 930.39(c).

Section 930.39(d) would be amended to clarify that if a Federal agency applies its more restrictive standards, it must, under the consistent to the maximum extent practicable standard, notify the State agency that it is proceeding with the activity even though the more restrictive federal standard may not be consistent with the state standard.

Section 930.39(e) would clarify the relationship between state permit requirements and the federal consistency requirements. Federal agencies must obtain state permits (including state coastal management program permits) when required by Federal law (other than the CZMA). For example, the Clean Water Act (CWA) requires Federal agencies to obtain state permits and certifications that regulate and control dredging and water pollution within the navigable waters of the state. See 33 U.S.C. 1323, 1341, 1344(t); *Friends of the Earth v. United States Navy*, 841 F.2d 927 (9th Cir. 1988). However, in some instances, there may be an issue as to the scope of a state or local permit that a Federal agency is required to obtain by another federal law. To insure that such a requirement is "not enlarged beyond what the language [of the federal law] requires," *United States Department of Energy v. Ohio*, 112 S. Ct. 1627 (1992), and to minimize conflicts in situations where the scope of the state permit requirement is an issue, the U.S. Department of Justice should be consulted. When a Federal agency is not required to obtain a state permit, the Federal agency must, pursuant to the CZMA, still be consistent to the maximum extent practicable with state enforceable policies, including the standards that underlie a state's permit program.

Section 930.40 would be amended to simplify the reference to § 930.39, by deleting subsections (b) and (c) and adding a reference to section 930.39 at the end of § 930.40.

Section 930.41(a) and (b) would be amended to simplify terms used in these regulations, extend the time for State agency review of consistency determinations from 45 to 60 days, and clarify that State agency objections must be postmarked by the last day of the 60 day review period (or last day of an extended period). Presently, a state response to a Federal agency's consistency determination is either an agreement or disagreement, and a State agency's response to an applicant's consistency certification for a federal license or permit activity is either a concurrence or an objection. The difference is largely semantic and confusing. Thus, all state responses to any consistency determination or certification are now either a concurrence or an objection. The intent of the change regarding the State agency's response is to clarify when the federal agency may presume concurrence. Postmarking the State agency's response by the end of the review period is reasonable, provides the State agency with the full 60 days to review the activity and still brings finality to the state's response.

The time period for a state's response to a consistency determination would be increased from 45 days to 60 days to allow states to provide adequate public participation as required by CZMA section 306(d)(14) (added in 1990 by CZARA). Federal agencies must provide consistency determinations to coastal states at least 90 days prior to federal action. 16 U.S.C. 1456(c)(1)(C). Currently, NOAA regulations require states to respond within 45 days of receiving the determination. 15 CFR 930.41(a). If a state needs more time, a Federal agency must allow one 15 day extension. 15 CFR 930.41(b). These regulatory requirements were promulgated prior to the addition of CZMA section 306(d)(14). OCRM's Final Guidance implementing CZMA section 306(d)(14) did not change these requirements. 59 FR 30339. It will be difficult for many states to meet the public participation requirement under state law and still respond within 45 days. The likely result of this new requirement is that for most reviews of consistency determinations, states will need at least one 15 day extension, resulting in at least a 60-day review. Thus, in order for states to develop meaningful public participation procedures, and to provide greater predictability for Federal agencies as to when a state's consistency review will be completed, NOAA proposes to provide states with a 60-day review period (extension provision remain the

same). This should alleviate the inconsistency between current regulations and the CZMA section 306(d)(14) requirement. The total time allowed before a federal action may commence (90 days) would not change.

Section 930.41(c) would be amended to clarify that the 90 day period begins when the State agency receives the determination and that federal agency action cannot commence prior to the end of the 90-day period unless the state concurs or the Federal agency and the state agree to a shorter period.

Section 930.41(d) would be added to clarify that states cannot unilaterally place time limits on concurrences. States must decide if they can concur with a consistency determination absent an agreement on time limits. Otherwise a state has the option of objecting for lack of information, if appropriate, or relying on § 930.45(b) (previously § 930.45(b)). There are several reasons why time limits are not acceptable. The CZMA requires a Federal agency to provide a consistency determination 90 days before final Federal agency approval. CZMA section 307(c)(2). The CZMA does not allow states to re-review the same activity. State consistency decisions and objections also must be based on the enforceable policies of a state's management program. A time limit on a state's concurrence would be based on the possibility that the activity or the state's program would change and not on enforceable policies, as required by the CZMA. Further, State agencies and Federal agencies may agree to a time limit for a state's concurrence, including concurrences for de minimis activities and general determinations. The CZMA does, however, require Federal agencies to carry out each activity in a manner that is consistent to the maximum extent practicable with a state's enforceable policies. Thus, if a project substantially changes between the time that the state reviews the activity and when the activity begins, the Federal agency must provide a new or supplemental consistency determination since the state would not have had the opportunity to review the "new" activity. This is precisely what the proposed § 930.46 is for. Section 930.46 only applies to previously reviewed activities that have not yet begun and the coastal effects are substantially different than as originally reviewed by the State agency.

Section 930.41(e) would clarify that a State agency may not assess the federal agency with a fee for the state's review of the Federal agency's consistency determination, unless such a fee is required under federal law applicable to that agency. The CZMA does not require

Federal agencies to pay processing fees. NOAA cannot require such fees by regulation. Thus, states cannot hold up their consistency reviews or object based on a failure by a Federal agency to pay a fee.

Section 930.42 would be moved to section 930.43. New section 930.42 would detail the public participation requirement for Federal agency activities. Public participation for a state's review of a Federal agency's consistency determination is required by CZMA section 306(d)(14). See NOAA's final guidance on this requirement, 59 FR 30339. The statutory section requires that "[t]he management program provide for public participation in permitting processes, consistency determinations, and other similar decisions." Proposed section 930.42 is sufficiently broad to give states flexibility in developing public participation procedures that meet the intent of section 306(d)(14). NOAA proposes to review each state's procedures during regularly scheduled evaluations of state coastal management programs under CZMA section 312 for compliance with the public participation requirement under section 306(d)(14), and will recommend procedural changes if necessary to meet proposed § 930.42. The purpose of the requirement is to provide the public with an opportunity to comment to the coastal management program on the program's review of a federal activity for consistency with the enforceable policies of a coastal management program, in addition to commenting on the activity itself. Thus, a Federal agency cannot be required to publish or pay for the notice.

Section 930.42(a) would be redesignated as 930.43(a) and amended to clarify that state objections must be based on the enforceable policies of an approved state coastal management program and that the objection letter must describe and cite the enforceable policies, and must state how the federal activity is inconsistent with the enforceable policy. This section also clarifies that the identification of alternatives by the state is optional, but that State agencies should describe alternatives, if they exist.

Section 930.43(d) would clarify that, in the event of a state objection, the remainder of the 90-day period should be used to resolve differences and that federal agencies should postpone agency action after the 90-day period, if differences have not been resolved. It also clarifies that, notwithstanding unresolved issues, after the 90 days a Federal agency may only proceed with the activity over a state's objection if the

Federal agency clearly describes, in writing, the federal legal requirements that prohibit the Federal agency from full consistency.

Section 930.46 would address the situation where a proposed activity previously reviewed, but not yet begun, will have coastal effects substantially different than originally described. If a proposed project has substantially changed, and the state has not reviewed the changes, then it is a new project, and a new consistency determination is required. Since the consistency test depends on whether coastal effects are reasonably foreseeable, and not on the nature of the activity, substantial new coastal effects would also trigger the consistency requirement. Thus, where an activity has not started, substantial new effects have been discovered, and the state has not had the opportunity to review the activity for consistency in light of these effects, section 930.46 would require a supplemental consistency determination. This is an affirmative duty on the part of Federal agencies. States may seek compliance either through negotiation, mediation or litigation. This proposed section is similar to NEPA requirements for supplemental statements. See 40 CFR § 1502.9(c)(1). NOAA expects that this section will be little used, but where it is used will eliminate confusion as to the consistency process and conform the regulations to the changes made by CZARA.

A similar section is repeated at the end of subparts D and F. See proposed sections 930.66 and 930.101.

#### *Subpart D—Consistency for Federal License or Permit Activities*

Sections 930.50 and 930.51(a) would be amended to be consistent with the statutory language referring to "required" federal license or permit activities. A required federal approval means that the activity could not be performed without the approval or permission of the Federal agency. The approval does not have to be mandated by federal law, it only has to be a requirement to perform the activity.

Section 930.51(a) would clarify that a federal lease to a non-federal applicant, e.g., to use federal land for a private or commercial purpose, is a form of authorization or permission under the definition of federal license or permit, with the exception of lease sales issued under the Outer Continental Shelf Lands Act, which are Federal agency activities under 15 CFR part 930, subpart C.

Section 930.51(b)(2) would be amended to clarify that "management program amendments" as used in this

section means any program change, i.e., amendment or routine program change, approved by OCRM under 15 CFR part 923, subpart H.

Section 930.51(c) would clarify that a major amendment is not a minor change to a previously reviewed activity, but a change that affects any coastal use or resource substantially different than effects previously reviewed by the State agency.

Section 930.51(d) would clarify that a "renewal" includes subsequent re-approvals, issuances or extensions. Administrative extensions that are required must be treated like any other renewal or major amendment. Otherwise, some activities that should obtain a renewal continue to operate for years under administrative extensions. These activities may have coastal effects that have not been reviewed by state coastal management programs and which need to be consistent with a state's enforceable policies. These activities are, in a sense new activities. Renewals cannot be used to negate the consistency requirement.

Section 930.51(e) would describe some parameters for how the determination of major amendments, renewals and substantially different in section 930.51 shall be made. Whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input from all parties. However, a State agency's views should be accorded deference to ensure that the State agency has the opportunity to review coastal effects substantially different than previously reviewed.

Section 930.51(f) would clarify the consistency ramifications when an applicant withdraws its application for a federal approval or if the approving Federal agency stays the application review process. If the applicant withdraws its application, then the consistency process stops (since there is no longer a federal application to trigger consistency). If the applicant re-applies, then a new consistency review is required. Likewise, if the Federal agency stays its proceeding, then the consistency review process will be stayed for the same amount of time. This will avoid confusion as to what the consistency review period is in these cases.

Section 930.52 would be amended to add to the definition of "applicant" applicants for a United States required approval from other nations, and applicants filing a consistency certification under the proposed general permit consistency process under § 930.31(e). Regarding other nations, the CZMA requires any applicant for a

required federal license or permit to certify consistency with state management programs. There may be instances where a foreign company or individual must obtain a United States approval.

Section 930.53(a) would be removed. Most state programs have either been developed or are in the process of doing so. Thus, this section is no longer necessary. Also, federal involvement in the identification of federal activities is addressed in the program development regulations. *See* 15 CFR § 923.53.

Section 930.53(b) would be moved to 930.53(a).

Sections 930.53(a)(1) and (2) would be added to clarify the review of listed federal license or permit activities occurring outside of the coastal zone. The geographic location requirement is a means of notifying applicants and Federal agencies of activities with reasonably foreseeable coastal effects and are, therefore, subject to consistency review. The most effective way for a state to review listed activities outside the coastal zone is to describe the geographic location of a state's review. States are strongly encouraged to modify their programs to include a description of the geographic location for listed activities occurring outside the coastal zone to be reviewed for consistency. This section also codifies existing administrative policy that treats listed activities outside the coastal zone (for which a state has not described a geographic location), and listed activities outside a geographically described location, as unlisted activities under this subpart. The state's coastal zone boundary is, in a sense, one geographic location description. Thus, Federal lands located within the boundaries of a state's coastal zone are sufficiently described for federal license or permit activities occurring on those federal lands.

Sections 930.53(c), (d) and (e) would be moved to 930.53(b), (c) and (d), respectively. The addition of proposed sections 930.53(c)(1) and (2) clarify the procedures for consultation with Federal agencies and approval by the Director.

Section 930.54(a)(1) would be amended to clarify where State agencies should look to monitor unlisted activities. Specifically, draft NEPA documents and **Federal Register** notices are key documents State agencies should review. This section also clarifies that State agency notice should be sent to the applicant, the Federal agency, and the Director of OCRM. The term "immediately" has been deleted as there is already specified a 30 day time period in which to respond.

Section 930.54(b) would be amended to clarify that the State agency's notification must also include a request for OCRM approval and the State agency's analysis supporting its claim that coastal effects are reasonably foreseeable.

Section 930.54(c) would be amended to clarify that the Director's decision deadline may be extended by the Director for complex issues or to address the needs of one or more of the parties. This would codify existing practice which has been useful in resolving issues often leading to the State agency's withdrawal of its request.

Section 930.54(f) would provide applicants and State agencies with the flexibility to agree to forego the unlisted activity procedure, have the applicant subject itself to consistency, and to expedite the consistency process. This would help to resolve any coastal management issues informally and to avoid delays due to disagreement over whether the application should be subject to State agency consistency review.

Section 930.56(b) would be moved to § 930.58(a)(2). This would consolidate all material on necessary data and information in one section. The proposed last sentence of § 930.56 as State agencies need to be able to identify their enforceable policies and have an obligation to identify the applicable policies to Federal agencies and applicants. Also, since many state coastal management programs now contain substantial numbers of enforceable policies, it is more efficient and effective if states can identify the applicable policies to the applicants, rather than the applicant having to pick and choose from all the state policies.

Section 930.58 would be modified to clarify information requirements and to consolidate language from other sections. Subsection 930.58(a)(1) (formerly § 930.56(b)) would clarify that the necessary data and information which applicants must provide to the State agency may include state permits or permit applications.

Sections 930.60(a)(1), (2) and (3) would clarify when the consistency time clock may begin; the consequences of an incomplete certification; and State agency notice requirements to the applicant and the Federal agency. Where the applicant has submitted an incomplete certification and the state begins the consistency time clock, the State agency cannot later stop the time clock unless the applicant agrees. Section 930.60(a)(2) would require State agencies to notify the applicant and the Federal agency of the date when necessary certification or information

deficiencies have been corrected, and the State agency's review has begun. Subsection (a)(3) would allow states and applicants to mutually agree to alter the review time period.

Section 930.62 would be deleted and part of it moved to section 930.61(a). The following section numbers in this subpart would be renumbered.

Section 930.63(a) (to be redesignated as section 930.62(a)) would be amended to clarify that a State agency's objection must be postmarked by the end of the six month review period.

Section 930.62(d) would be moved from § 930.64(c).

Section 930.64(b) (to be redesignated as section 930.63(b)) would be amended to clarify that State agency objections must be based on enforceable policies. Sections 930.63(b) and (d) would be revised to clarify that alternatives identification is an option for the state and to provide requirements on alternative descriptions if a State agency chooses to identify alternatives. These changes recognize the fact that, even if an applicant proposes to adopt a State agency's alternative, the Federal agency cannot approve the project due to the State agency's objection. Thus, if an applicant wants the federal approval the applicant must consult with the State agency and the State agency must remove its objection, unless an applicant appeals to the Secretary and prevails.

Section 930.64(e) (to be redesignated as section 930.63(e)) would be amended to clarify the notification of availability of the Secretarial override process. Since a concurrence with conditions may also become an objection, a conditional concurrence must also include similar appeal language.

Section 930.66 (to be redesignated as § 930.65) would be amended to provide states with a more meaningful opportunity to address instances where the State agency claims that an activity once found consistent or not affecting any coastal use or resource, is not being conducted as originally proposed and which will cause effects on a coastal use or resource substantially different than originally proposed. Previously, states could only request that the Federal agency take remedial action. If a Federal agency does not take remedial action the State agency can request that the Director find that the effects of the activity have substantially changed and require the applicant to submit an amended or new consistency certification and supporting information, or comply with the originally approved certification. This change mirrors the existing remedial action section of subpart E (*see* § 930.86)

and, like section 930.86, is not expected to be used frequently. However, the procedure exists, if necessary, to ensure that federal license or permit activities continue to be conducted consistent with a state's management program.

Section 930.66 would contain a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

*Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities*

Section 930.75(b) would be deleted as redundant with the proposed changes to § 930.76(b) and with § 930.58.

Section 930.77 would be deleted since this information is redundant with § 930.58, which is referenced in § 930.76(b). The rest of the sections in this subpart are renumbered accordingly (with additional minor changes, mostly conforming with changes made in subpart D).

Section 930.79(a) would be amended to clarify that if, after State agency concurrence, the activity, or effects from the activity, which the State agency reviewed, has substantially changed, then a new consistency certification shall be included in the person's application for the federal license or permit. This is consistent with the statutory requirement that all federal actions affecting any coastal use or resource are subject to the consistency requirement. If the activity or effects have changed, then the state did not have the opportunity to review the activity.

Sections 930.83(b)–(e) (currently § 930.84(b)–(e)) would be deleted since they are unnecessary and are replaced by the new reference in revised § 930.83.

*Subpart F—Consistency for Federal Assistance to State and Local Governments*

Section 930.94 would be amended to clarify that all federal assistance activities that affect any coastal use or resource are subject to the consistency requirement. While the intergovernmental review process is the preferred method for notifying the State agency and for State agency review, the intergovernmental review process may not provide notification for all federal assistance activities subject to the consistency requirement. Proposed §§ 930.94(b) and 930.95 provide methods to ensure adequate notification and review, by specifying a listed and unlisted procedure.

Section 930.94(c) would be added to conform to the statutory requirement that the applicant agency provide an

evaluation of consistency. *See* CZMA section 307(d).

Sections 930.96(c)–(e) would be deleted since the reference to § 930.63 in § 930.63(b) eliminates the need for these subsections.

The unlisted activity procedure in section 930.98 follows the unlisted activity procedures found at § 930.54, except that Director approval is not required, because the State agency, through its monitoring and review of federal assistance activities, determines if coastal effects are reasonably foreseeable.

Section 930.100 would be amended to provide states with more meaningful opportunity to address remedial action for previously reviewed activities. *See* discussion of § 930.65.

Section 930.101 would contain a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

*Subpart G—Secretarial Mediation*

Only minor changes were made to subpart G. Subpart G provides a process for Federal agencies and coastal states to request that the Secretary of Commerce mediate serious disputes regarding the federal consistency requirements. Subpart G also provides for informal negotiation by OCRM. Both Secretarial mediation and informal negotiations require the participation of both agencies and are non-binding.

*Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests*

Pursuant to section 307 of the Act, no federal agency may issue a license or permit for an activity until an affected coastal state has concurred that the activity will be conducted in a manner consistent with the state's management program unless the Secretary, on his own initiative or on appeal by the applicant, finds that the activity is consistent with the objectives of the Act or is otherwise necessary in the interest of national security. Subpart H sets forth the procedures applicable to such appeals and the requirements for such findings by the Secretary.

The Secretary's review is an independent assessment of the activity (the Secretary's review of the State agency's decision is limited to ensuring that the state's objection to an applicant's consistency certification was based on enforceable policies that are incorporated into the state's management program and that other consistency process requirements were met). If the Secretary overrides a State agency's objection, then the Federal agency may permit or fund the activity.

Changes were made to § 930.121(a) and (b) to ensure that the Secretary overrides a state's objection only where there is a national interest in the activity and that interest outweighs the adverse coastal effects of the activity. These changes will allow the Secretary to address issues of national concern and not minor local land use decisions that have only a de minimis connection to coastal uses and the national interest defined in the CZMA's objectives.

In addition, changes were made to § 930.121(d) to clarify the determination by the Secretary of the availability of alternatives. Currently, under the other elements of § 930.121, the Secretary may consider many factors when determining whether an appellant has met a particular element. Regarding the element on alternatives, there is confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal. The changes to § 930.121(d) reflect the independent basis of the Secretary's decision by not restricting the scope of the Secretary's review. These changes will ensure that the Secretary's findings regarding alternatives will not be restricted, but will be informed and based on the Secretary's independent administrative record for each case. In this way, both the state and appellant will be able to provide to the Secretary information on whether an alternative is reasonable and described with sufficient specificity that might not have been available when the state issued its objection.

Section 930.125 is revised to make it consistent with the 1990 amendments to the CZMA. The changes include the requirement that an appellant pay a filing fee to the Secretary.

Section 930.126 would codify and explain the statutory requirement for the Secretary to collect fees from appellants to recover the costs of administering and processing appeals. These fees are in addition to the filing fees. *See* 16 USC 1456(i).

Section 930.127 would clarify when an appellant must submit supporting data and information. This requirement is necessary so that the Secretary can meet new time limits placed on the Secretary by the 1996 amendments to the CZMA.

Section 930.132 would be amended to clarify the procedures applicable to reviews initiated by the secretary on his/her own initiative. Section 930.132(b) is superseded by section 8 of the Coastal Zone Protection Act of 1996, Public Law 104–150. Section 8 created

a new section 319 of the CZMA concerning the timing of appeals.

Sections 930.133 and 134 would be replaced with a cross reference in § 930.134(b) to the provisions in subpart H for processing and administering appeals.

*Subpart I—Assistant Administrator Reporting and Review*

Existing subpart I would be removed. This subpart has never been used, and there are other existing CZMA mechanisms for reporting and review: oversight and monitoring under CZMA section 306, evaluations under CZMA section 312, appeals under CZMA section 307, and unlisted activity review approvals.

In addition, section 930.145 would be revised and moved to section 930.3.

*Proposed Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects*

The CZARA clarified that the federal consistency trigger is coastal effects, regardless as to the geographic location of the federal activity. See 16 U.S.C. 1456; H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess., 970–972. Thus, federal consistency applies to all relevant federal actions, even when they occur outside the state's coastal zone and in another state. For example, State A may review a federal permit application for an activity occurring wholly within State B if State A has a federally approved coastal management program and the activity will have coastal effects. An example of this type of activity is the placement of a sewage outfall pipe in State B's waters that results in impacts to shellfish harvesting waters in State A.

In 1994, the Secretary of Commerce found, in the Lake Gaston decision, that federal consistency applied to a federal activity occurring in one state and having coastal effects in another state (hereinafter referred to as "interstate consistency"). This decision was based on a 1989 NOAA General Counsel opinion, the plain language of the CZMA and the Conference Report. See also 136 Cong. Rec. H8077 (Sep. 26, 1990).

Interstate consistency does not expand a coastal state's jurisdiction or affect the sovereignty of other states. Federal consistency applies only to federal actions, not state actions. If State A determines that an activity in State B would affect its coastal resources, but no federal permit or other federal action is required to undertake the activity, State A does not have any authority under the CZMA to review that activity. The CZMA also, even when there is a federal connection, does not give coastal states

the authority to review the application of the laws, regulations, or policies of any other state. The CZMA only allows a state coastal management program to review the federal approval of an activity. NOAA proposes to add a new subpart I to provide clearer guidance as to how interstate consistency should be applied.

NOAA believes that regulations are needed so that the application of interstate consistency is carried out in a predictable, reasonable, and efficient manner. NOAA is specifically addressing interstate consistency to encourage neighboring states to cooperate in dealing with common resource management issues, and to provide states, permitting agencies, and the public with a more predictable application of the consistency requirement to these activities.

Interstate resource management issues are best resolved on a cooperative, proactive basis.

**VIII. Miscellaneous Rulemaking Requirements**

*Executive Order 12372: Intergovernmental Review*

This program is subject to Executive Order 12372.

*Executive Order 13132: Federalism Assessment*

NOAA has concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The proposed changes in the federal consistency regulations are intended to facilitate Federal agency coordination with coastal states, and ensure that federal actions affecting any coastal use or resource are consistent with the enforceable policies of approved state coastal management programs. The Coastal Zone Management Act (CZMA) and these revised implementing regulations promote the principles of federalism articulated in Executive Order 13132 by granting the states a qualified right to review certain federal activities that affect the land and water uses or natural resources of state coastal zones. Section 307 of the CZMA and these implementing regulations effectively transfer power from federal agencies to state agencies whenever federal agencies propose activities or applicants for required federal license or permit propose to undertake activities affecting state coastal resources. Through the CZMA, federal agencies are required to carry out their activities in a manner that is consistent to the maximum extent practicable with federally

approved state programs and licensees and permittees to be fully consistent with the state programs. The CZMA and these implementing regulations, rather than preempting a State provide a mechanism for it to object to federal activities that are not consistent with the State's management program. A state objection prevents the issuance of the federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance state authorities, no federalism assessment need be prepared.

*Executive Order 12866: Regulatory Planning and Review*

This regulatory action is not significant for purposes of Executive Order 12866.

*Regulatory Flexibility Act*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. This proposed rule will only make minor changes to existing law, under both the CZMA and the existing regulations. The existing regulations do not have a significant impact on a substantial number of small entities and, thus, codifying in the regulations the requirements of the CZMA, as amended in 1990, and other minor changes, will not result in any additional economic impact on affected entities. The proposed rule: (1) Addresses coastal management programs of coastal states and territories, (2) removes outdated or unnecessary provisions for federal consistency purposes, (3) revises the remaining provisions to improve federal-state coordination of actions affecting the coastal zone, and (4) do not impose any significant new requirements on states, federal agencies, businesses, or the public. The basic substantive requirements in the existing regulations and the proposed rule would remain in effect whether or not the proposed rule is adopted. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

The term "small entity" includes small businesses, small organizations, and small governmental jurisdictions. The federal consistency regulations, and the proposed rule, primarily affect states and federal agencies. Federal consistency also applies to private land owners proposing certain activities

affecting the coastal zone that require federal approvals. State and federal agencies and private landowners are not small entities under the Regulatory Flexibility Act (RFA). Federal consistency does apply to some small businesses, small organizations and small governmental jurisdictions proposing activities that affect the coastal zone. (NOAA's National Marine Fisheries Service defines a small jurisdiction under the RFA as any government of a district with a population of less than 50,000.) However, these numbers are insignificant when compared to the number of small businesses and governmental jurisdictions in coastal states. The Federal consistency appeal process affects very few entities of any kind. Since the CZMA was enacted in 1972, only 39 consistency appeals have been filed with the Secretary of Commerce. Of those 39 consistency appeals, only 5 appeals have involved small entities. In 27 years of implementation, only five small entities have been affected by these regulations governing consistency appeals to the Secretary of Commerce.

In addition, the number of small entities affected by the consistency provisions of the CZMA generally, are insignificant when compared to the total number of small businesses and governmental jurisdictions in the 33 coastal states with approved coastal management programs. For example, in the State of North Carolina, for the period January 1, 1998, to December 31, 1998, the state reviewed 26 applications for federal licenses or permits under 15 CFR part 930, subpart D (the existing regulations), for activities that did not require a state permit. Of these 26 applications, no small entities were subject to the state's CZMA federal consistency review authority and the existing regulations. During the same period the state also reviewed 90 applications by state agencies and local governments for federal financial assistance. Of these 90 applications, 28 small entities were subject to the state's CZMA federal consistency review authority and the existing regulations. The State did not object to any of these financial assistance applications. Moreover, all of these financial assistance activities involved allowing federal funds to improve local infrastructure. North Carolina is a representative state in the use and application of the federal consistency requirement and the existing regulations. This is evidenced by the fact that all State coastal management programs concur with 95–97 percent of

all federal license or permit activities, and over 99 percent of all applicable small organization and governmental jurisdiction federal assistance activities.

Thus, the existing regulations do not, and the proposed rule will not, have a significant impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Many of these are existing requirements and are being submitted to OMB for approval. This Notice also refers to federally approved coastal management plans which have previously been approved by OMB under 0648–0119. Public reporting burden for the collection of information related to this proposed rule is estimated to average as follows: (A) State objection and concurrence to consistency certifications or determinations approximately 18,800 hours; (B) State requests to review unlisted activities approximately 12 hours; (C) public notice requirements approximately 1300 hours; (D) remedial action and supplemental review approximately 12 hours; (E) listing notices approximately 1 hour; (F) mediation requests approximately 6 hours; and (G) appeals to the Secretary of Commerce approximately 200 hours.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of the information, including through the use of automated collection techniques or other forms of information technology. Send comments on any of these or any other aspects of the collection of information to David Kaiser, Federal Consistency Coordinator at the ADDRESSES above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### *National Environmental Policy Act*

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

#### **List of Subjects in 15 CFR Part 930**

Administrative practice and procedure, Coastal zone, Reporting and recordkeeping requirements.

Dated: April 6, 2000.

**Ted Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

For the reasons set out in the preamble, NOAA proposes to revise 15 CFR part 930 to read as follows:

### **PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS**

#### **Subpart A—General Information**

Sec.

- 930.1 Overall objectives.
- 930.2 Public participation.
- 930.3 Review of the implementation of the federal consistency requirement.
- 930.4 Conditional concurrences.
- 930.5 State enforcement actions.
- 930.6 State agency responsibility.

#### **Subpart B—General Definitions**

- 930.10 Index to definitions for terms defined in part 930.
- 930.11 Definitions.

#### **Subpart C—Consistency for Federal Agency Activities 930.30 Objectives.**

- 930.31 Federal agency activity.
- 930.32 Consistent to the maximum extent practicable.
- 930.33 Identifying Federal agency activities affecting any coastal use or resource.
- 930.34 Federal and State agency coordination.
- 930.35 Negative determinations for proposed activities.
- 930.36 Consistency determinations for proposed activities.
- 930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements.
- 930.38 Consistency determinations for activities initiated prior to management program approval.
- 930.39 Content of a consistency determination.
- 930.40 Multiple Federal agency participation.
- 930.41 State agency response.
- 930.42 Public participation.
- 930.43 State agency objection.
- 930.44 Availability of mediation for disputes concerning proposed activities.
- 930.45 Availability of mediation for previously reviewed activities.
- 930.46 Supplemental coordination for proposed activities.

**Subpart D—Consistency for Activities Requiring a Federal License or Permit**

- 930.50 Objectives.
- 930.51 Federal license or permit.
- 930.52 Applicant.
- 930.53 Listed federal license or permit activities.
- 930.54 Unlisted federal license or permit activities.
- 930.55 Availability of mediation for license or permit disputes.
- 930.56 State agency guidance and assistance to applicants.
- 930.57 Consistency certifications.
- 930.58 Necessary data and information.
- 930.59 Multiple permit review.
- 930.60 Commencement of state agency review.
- 930.61 Public participation.
- 930.62 State agency concurrence with a consistency certification.
- 930.63 State agency objection to a consistency certification.
- 930.64 Federal permitting agency responsibility.
- 930.65 Remedial action for previously reviewed activities.
- 930.66 Supplemental coordination for proposed activities.

**Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities**

- 930.70 Objectives.
- 930.71 Federal license or permit activity described in detail.
- 930.72 Person.
- 930.73 OCS plan.
- 930.74 OCS activities subject to state agency review.
- 930.75 State agency assistance to persons.
- 930.76 Submission of an OCS plan, necessary data and information and consistency certification.
- 930.77 Commencement of State agency review and public notice.
- 930.78 State agency concurrence or objection.
- 930.79 Effect of State agency concurrence.
- 930.80 Federal permitting agency responsibility.
- 930.81 Multiple permit review.
- 930.82 Amended OCS plans.
- 930.83 Review of amended or new OCS plans; public notice.
- 930.84 Continuing State agency objections.
- 930.85 Failure to comply substantially with an approved OCS plan.

**Subpart F—Consistency for Federal Assistance to State and Local Governments**

- 930.90 Objectives.
- 930.91 Federal assistance.
- 930.92 Applicant agency.
- 930.93 Intergovernmental review process.
- 930.94 State review process for consistency.
- 930.95 Guidance provided by the state agency.
- 930.96 Consistency review.
- 930.97 Federal assisting agency responsibility.
- 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.
- 930.99 Availability of mediation for federal assistance disputes.

- 930.100 Remedial action for previously reviewed activities.
- 930.101 Supplemental coordination for proposed activities.

**Subpart G—Secretarial Mediation**

- 930.110 Objectives.
- 930.111 Informal negotiations.
- 930.112 Request for mediation.
- 930.113 Public hearings.
- 930.114 Secretarial mediation efforts.
- 930.115 Termination of mediation.
- 930.116 Judicial review.

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**Authority:** 16 U.S.C. 141 *et seq.*

**Subpart A—General Information****§ 930.1 Overall objectives.**

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while

making certain that the objectives of the federal consistency requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations (provided that public participation requirements are met and applicable state management program enforceable policies are considered).

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved coastal management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved coastal management programs; and

(g) To provide procedures which permit the Secretary to review federal license or permit activities, or federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security.

**§ 930.2 Public participation.**

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

**§ 930.3 Review of the implementation of the federal consistency requirement.**

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each state's implementation of the federal consistency requirement. The Director shall evaluate instances where a State agency is believed to have either failed to object to inconsistent federal actions, or improperly objected to consistent federal actions. This evaluation shall be incorporated within the Director's general efforts to ascertain instances where a state has not adhered to its approved management program and such lack of adherence is not justified.

**§ 930.4 Conditional concurrences.**

(a) Federal agencies, applicants, persons and applicant agencies should

cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to § 930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions;

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions. Federal agencies shall enforce, to the extent allowed by law, the state conditions contained in the federal permit or license as approved with the state's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

**§ 930.5 State enforcement action.**

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or state enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

**§ 930.6 State agency responsibility.**

(a) This section describes the responsibilities of the "State agency" described in § 930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the state's management program, efficiently coordinate all state coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the state's consistency responsibilities to a designee agency must be described in the state's management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State agency. A state may have two State agencies designated pursuant to section 306(d)(6) of the Act where the state has two geographically separate federally-approved coastal management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (see subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (see subparts D, E and I of this part), and reviewing the consistency of federal assistance activities proposed by applicant agencies (see subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other state, regional, or local government agencies. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the consistency of a proposed federal assistance activity.

(c) If described in a state's management program, the issuance or denial of relevant state permits can constitute the State agency's consistency concurrence or objection if the State agency ensures that the state permitting agencies or the State agency review

individual projects to ensure consistency with all applicable state management program policies. The State agency shall monitor such permits issued by another state agency.

**Subpart B—General Definitions**

**§ 930.10 Index to definitions for terms defined in part 930.**

Term	Section
Act .....	930.11(a)
Any coastal use or resource .....	930.11(b)
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Coastal zone .....	930.11(e)
Consistent to the maximum extent practicable.	930.32
Consistent with the objectives or purposes of the Act.	930.121
Development project .....	930.31(b)
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Effect on any coastal use or resource.	930.11(g)
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Federal agency activity .....	930.31
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State agency .....	930.11(o)

**§ 930.11 Definitions.**

(a) *Act.* The term "Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).

(b) *Any coastal use or resource.* The phrase "any coastal use or resource" means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the Act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a state's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to,

air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a state's management program.

(c) *Assistant Administrator*. The term "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities*. The term "associated facilities" means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance), and without which the federal action, as proposed, could not be conducted. The proponent of a federal action shall consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I of this part).

(e) *Coastal Zone*. The term "coastal zone" has the same definition as provided in section 304(1) of the Act.

(f) *Director*. The term "Director" means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect)*. The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a federal action. (The term "federal action" includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy*. "The term 'enforceable policy' means State policies

which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone," 16 U.S.C. 1453(6a), and which are incorporated in a state's management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses.

Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *Executive Office of the President*. The term "Executive Office of the President" means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal state.

(j) *Federal agency*. The term "Federal agency" means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation.

(k) *Management program*. The term "management program" has the same definition as provided in section 304(12) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal state in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

(l) *OCRM*. The term "OCRM" means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration ("NOAA"), U.S. Department of Commerce.

(m) *Secretary*. The term "Secretary" means the Secretary of Commerce and/or designee.

(n) *Section*. The term "Section" means a section of the Coastal Zone Management Act of 1972, as amended.

(o) *State agency*. The term "State agency" means the agency of the state government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

### Subpart C—Consistency for Federal Agency Activities

#### § 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved state management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

#### § 930.31 Federal agency activity.

(a) The term "Federal agency activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. This encompasses a wide range of Federal agency activities which initiate an event or series of events where coastal effects are reasonably foreseeable, e.g., rulemaking, planning, physical alteration, exclusion of uses. The term "Federal agency activity" does not include the issuance of a federal license or permit to an applicant or person (see subparts D and E of this part) or the granting of federal assistance to an applicant agency (see subpart F of this part).

(b) The term federal "development project" means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit program proposed by a Federal agency is subject to this subpart, unless a Federal agency chooses to subject its general permit program to consistency review under subpart D of this part. When proposing a general permit program, a Federal agency shall provide a consistency determination to the relevant state management programs and request that the State agency(ies) provide the Federal agency with conditions that would permit the State agency to concur with

the Federal agency's consistency determination. State concurrence should remove the need for the State agency to review future case-by-case uses of the general permit. Federal agencies shall, to the maximum extent practicable, incorporate the state conditions into the general permit. If the state conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not authorized for that state. Accordingly, the applicants in those states shall provide the State agency with a consistency certification under subpart D of this part.

**§ 930.32 Consistent to the maximum extent practicable.**

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

(2) Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing within such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of state management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be consistent with the enforceable policies of the management program.

(3) For the purpose of determining consistent to the maximum extent practicable under paragraphs (a) (1) and (2) of this section, federal legal authority includes Federal appropriation Acts if the appropriation Act includes language that specifically prohibits full consistency with specific enforceable policies of state management programs. Federal agencies shall not use a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being fully consistent in Federal budget and planning processes as a basis for being consistent to the maximum extent practicable with an enforceable policy of a state's management program. The only

circumstance where a Federal agency may rely on a lack of funding as a limitation on being fully consistent with an enforceable policy is the Presidential exemption described in section 307(c)(1)(B) of the Act (16 USC 1456(c)(1)(B)). In cases where the cost of being consistent with the enforceable policies of a state's management program was not included in the Federal agency's budget and planning processes, the Federal agency should determine the amount of funds needed and seek additional discretionary federal funds. Federal agencies should include the cost of being fully consistent with the enforceable policies of state management programs in their budget and planning processes, to the same extent that a Federal agency would plan for the cost of complying with other federal requirements.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances, e.g., an emergency, arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. Such deviation shall be the minimum necessary to address the exigent circumstances. Federal agencies shall carry out their activities consistent to the maximum extent practicable with the enforceable policies of a state's management program, to the extent that the exigent circumstances allow. Federal agencies shall consult with State agencies to the extent that an unforeseen circumstance allows and shall attempt to seek State agency concurrence within the time allowed. This invariably involves a case-by-case evaluation conducted by the Federal agency. Once the exigent circumstances have passed Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable policies of state management programs.

(c) A classified activity that affects any coastal use or resource is not exempt from the requirements of this subpart, unless the activity is exempted by the President under section 307(c)(1)(B) of the Act. Under the consistent to the maximum extent practicable standard, the Federal agency shall provide to the State agency a description of the project and coastal effects that it is legally permitted to release or does not otherwise breach the classified nature of the activity. Even when a Federal agency may not be able to disclose project information, the Federal agency shall conduct the

classified activity consistent to the maximum extent practicable with the enforceable policies of state management programs. The term classified means to protect from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order.

**§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.**

(a) Federal agencies shall determine which of their activities affect any coastal use or resource of states with approved management programs.

(1) Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource. An action which has minimal environmental effects may still have effects on a coastal use (e.g., effects on public access and recreational opportunities, protection of historic property) or a coastal resource. Therefore, Federal agencies shall, in making a determination of effects, review relevant state coastal management program policies as part of determining effects on any coastal use or resource.

(2) If the Federal agency determines that there are no effects on any coastal use or resource, and a negative determination under § 930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the Act.

(3) De minimis Federal agency activities. Federal agencies are encouraged to review their activities, other than development projects within the coastal zone, to identify de minimis activities, and request State agency concurrence that these de minimis activities should not be subject to further State agency review. De minimis activities shall only be excluded from State agency review if a Federal agency and State agency have mutually agreed. The State agency is not required to provide for public participation under section 306(d)(14) of the Act for the Federal agency's de minimis activity request. If the State agency objects to the Federal agency's de minimis finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination pursuant to this subpart. De minimis activities are activities that have coastal effects that are trifling in nature and a Federal agency and State agency have mutually agreed that the activity is de minimis. OCRM is

available to facilitate a Federal agency's proposal.

(4) Environmentally beneficial activities. The State agency and Federal agencies may mutually agree to exclude environmentally beneficial Federal agency activities (either on a case-by-case basis or for a category of activities) from further State agency review.

(5) General consistency determinations, phased consistency determinations, and national or regional consistency determinations under § 930.36 are also available to facilitate federal-state coordination.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(c) Federal agency activities and development projects outside of the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(d) Federal agencies shall construe broadly the effects test to provide State agencies with a consistency determination under § 930.34 and not a negative determination under § 930.35 or other determinations of no effects. Early coordination and cooperation between a Federal agency and the State agency can enable the parties to focus their efforts on particular Federal agency activities of concern to the State agency.

#### **§ 930.34 Federal and State agency coordination.**

(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.

(2) *Use of existing procedures.* Federal agencies are encouraged to coordinate and consult with State agencies through use of existing procedures in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens. Where necessary, these existing procedures should be modified to facilitate coordination and consultation under the Act.

(b) *Listed activities.* State agencies should list in their management programs Federal agency activities which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency

determination. Listed Federal agency activities shall be described in terms of the specific type of activity involved (e.g., federal reclamation projects). In the event the State agency chooses to describe Federal agency activities with reasonably foreseeable coastal effects outside of the coastal zone it shall also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(c) *Unlisted activities.* State agencies should monitor unlisted Federal agency activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, **Federal Register**) and should notify Federal agencies of unlisted Federal agency activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. The provisions in paragraphs (b) and (c) of this section are recommended rather than mandatory procedures for facilitating federal-state coordination of Federal agency activities which affect any coastal use or resource. State agency notification to the Federal agency is neither a substitute for nor does it eliminate Federal agency responsibility to comply with the consistency requirement, and to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal agency activities which the Federal agency finds affect any coastal use or resource, regardless as to whether the State agency has listed the activity or notified the Federal agency through case-by-case monitoring.

(d) *State guidance and assistance to Federal agencies.* As a preliminary matter, a decision that a Federal agency activity affects any coastal use or resource should lead to early consultation with the State agency (i.e., before the required 90-day period). Federal agencies should obtain the views and assistance of the State agency regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a state's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request.

#### **§ 930.35 Negative determinations for proposed activities.**

(a) If a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the relevant State agencies with a negative determination for a Federal agency activity:

(1) Identified by a State agency on its list or through case-by-case monitoring of unlisted activities; or

(2) Which is the same as or is similar to activities for which consistency determinations have been prepared in the past.

(b) *Content of a negative determination.* A negative determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a state's management program and include the evaluation in the negative determination. The level of detail in the Federal agency's analysis may vary depending on the scope and complexity of the activity and issues raised by the State agency, but shall be sufficient for the State agency to evaluate whether coastal effects are reasonably foreseeable.

(c) A negative determination under paragraph (a) of this section shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule. If a State agency fails to respond to a Federal agency's negative determination within 60 days, State agency concurrence with the negative determination shall be presumed. State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. If a State agency objects to a negative determination, asserting that coastal effects are reasonably foreseeable, the Federal agency shall consider submitting a consistency determination to the State agency or otherwise attempt to resolve any disagreement within the remainder of the 90-day period. If a Federal agency, in response to a State agency's objection to a negative determination, agrees that coastal effects are reasonably foreseeable, the State agency and Federal agency should

attempt to agree to complete the consistency review within the 90-day period for the negative determination or consider an alternative schedule pursuant to § 930.36(b)(1). Federal agencies should postpone final Federal agency action, beyond the 90-day period, until a disagreement has been resolved. State agencies are not required to provide public notice of the receipt of a negative determination or the resolution of an objection to a negative determination, unless a Federal agency submits a consistency determination pursuant to § 930.34 and a new 90-day review period is started.

(d) In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity affects any coastal use or resource, either party may seek the Secretarial mediation or OCRM informal negotiation services provided for in subpart G of this part.

**§ 930.36 Consistency determinations for proposed activities.**

(a) Federal agencies shall review their proposed Federal agency activities which affect any coastal use or resource in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved state management programs. Federal agencies should consult with State agencies at an early stage in the development of the proposed activity in order to assess whether such activities will be consistent to the maximum extent practicable with the enforceable policies of such programs.

(b) *Timing of consistency determinations.* (1) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the state's management program, but before the Federal agency reaches a significant point of decisionmaking in its review process, i.e., while the Federal agency has the ability to modify the activity. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

(2) Federal and State agencies may mutually agree upon procedures for

extending the notification requirement beyond 90 days for activities requiring a substantial review period, and for shortening the notification period for activities requiring a less extensive review period, provided that public participation requirements are met.

(c) *General consistency determinations.* In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (see § 930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(d) *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where major federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the state's management program.

(e) *National or regional consistency determinations.* (1) A Federal agency may provide states with consistency determinations for Federal agency

activities that are national or regional in scope (e.g., rulemaking, national plans), and that affect any coastal use or resource of more than one state. Many states share common coastal management issues and have similar enforceable policies, e.g., protection of a particular coastal resource. The Federal agency's national or regional consistency determination should, at a minimum, address the common denominator of these policies, i.e., the common coastal effects and management issues, and thereby address different states' policies with one discussion and determination. If a Federal agency decides not to use this section, it must issue consistency determinations to each coastal state pursuant to § 930.39.

(2) Federal agencies shall be consistent to the maximum extent practicable with the enforceable policies of each state's management program. Thus, the Federal agency's national or regional consistency determination shall contain, if necessary, sections that would apply to individual states to address coastal effects and enforceable policies unique to particular states. Early coordination with coastal states will enable the Federal agency to identify particular coastal management concerns and policies. In addition, the Federal agency could address the concerns of each affected state by providing for state conditions for the proposed activity. Further, the consistency determination could identify the coordination efforts and describe how the Federal agency responded to State agency concerns.

**§ 930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements.**

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

**§ 930.38 Consistency determinations for activities initiated prior to management program approval.**

(a) A consistency determination is required for ongoing Federal agency activities other than development projects initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination is required for major, phased federal development project decisions described in § 930.36(d) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider effects on any coastal use or resource not fully evaluated at the outset of the project. This provision shall not apply to phased federal decisions which were specifically described, considered and approved prior to management program approval (e.g., in a final environmental impact statement issued pursuant to NEPA).

**§ 930.39 Content of a consistency determination.**

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the

necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity, its effects on any coastal use or resource, associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings), and the effects of the associated facilities (e.g., erosion, wetlands, beach access impacts), must all be consistent to the maximum extent practicable with the enforceable policies of the management program.

(c) In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable policies of the management program. However, Federal agencies should give adequate consideration to management program provisions which are in the nature of recommendations.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the state's management program, the Federal agency may continue to apply its stricter standards. In such cases the Federal agency shall inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

(e) *State permit requirements.* Federal law, other than the CZMA, may require a Federal agency to obtain a state permit. Even when Federal agencies are not required to obtain state permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such state permit programs that are part of a state's management program.

**§ 930.40 Multiple Federal agency participation.**

Whenever more than one Federal agency is involved in a Federal agency activity or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity, the Federal agencies may prepare one consistency determination for all the federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies and

shall comply with the requirements of § 930.39.

**§ 930.41 State agency response.**

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not postmarked within 60 days from receipt of the Federal agency's consistency determination and supporting information. The 60-day review period begins when the State agency receives the consistency determination and supporting information required by § 930.39(a). If the information required by § 930.39(a) is not included with the determination, the State agency shall immediately notify the Federal agency that the 60-day review period has not begun, what information required by § 930.39(a) is missing, and that the 60-day review period will begin when the missing information is received by the State agency.

(b) State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action shall not be taken sooner than 90 days from the receipt by the State agency of the consistency determination unless the state concurs or concurrence is presumed, pursuant to paragraphs (a) and (b) of this section, with the activity, or unless both the Federal agency and the State agency agree to an alternative period.

(d) *Time limits on concurrences.* A State agency cannot unilaterally place a time limit on its concurrence. If a State agency believes that a time limit is necessary, states and Federal agencies may agree to a time limit. If there is no agreement, later phases of the activity that will have effects not evaluated at the time of the original consistency determination will require either a new consistency determination or a phased review under § 930.36(c) of this subpart.

(e) *State processing fees.* The Act does not require Federal agencies to pay state processing fees. State agencies shall not

assess a Federal agency with a fee to process the Federal agency's consistency determination unless payment of such fees is required by other federal law or otherwise agreed to by the Federal agency and allowed by the Comptroller General of the United States. In no case may a State agency stay the consistency timeclock or base its objection on the failure of a Federal agency to pay a fee.

**§ 930.42 Public participation.**

(a) State coastal management programs shall provide for public participation in the State agency's review of consistency determinations. Public participation, at a minimum, shall consist of public notice in the area(s) of the coastal zone likely to be affected by the activity, as determined by the State agency.

(b) *Timing of public notice.* States shall provide timely public notice after the consistency determination has been received by the State agency, except in cases where earlier public notice on the consistency determination by the Federal agency or the State agency meets the requirements of this section. A public comment period shall be provided by the state sufficient to give the public an opportunity to develop and provide comments on whether the project is consistent with management program enforceable policies and still allow the State agency to issue its concurrence or objection within the 60 day state response period.

(c) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency with the enforceable policies of the state coastal management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the State agency.

(d) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official state gazette, a local newspaper serving areas of coastal zone likely to be affected by the activity, individual state mailings, and public notice through a state coastal management newsletter. States shall not require that the Federal agency provide public notice.

**§ 930.43 State agency objection.**

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for

the objection and supporting information. The State agency response must describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations);

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

(b) If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program.

(c) State agencies shall send to the Director a copy of objections to Federal agency consistency determinations.

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (see § 930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period Federal agencies should use the dispute resolution mechanisms of this part and postpone final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless consistency with the enforceable policies of the management program cannot be achieved under the "consistent to the maximum extent practicable" standard described in § 930.32, and the Federal agency clearly describes, in writing, to the State agency the legal impediments to full consistency (see § 930.32(a)). In cases where the Federal agency asserts that it is fully consistent with the enforceable policies of the management program, but the State agency asserts that the Federal agency is not fully consistent, the Federal agency shall be consistent to the maximum extent practicable with the State agency's interpretation, pursuant to §§ 930.11(h) and 930.32. If a Federal agency decides to proceed with a Federal agency activity that is consistent to the maximum extent practicable, but is objected to by a State agency or follow an alternative

suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

**§ 930.44 Availability of mediation for disputes concerning proposed activities.**

In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM informal negotiation services provided for in subpart G of this part.

**§ 930.45 Availability of mediation for previously reviewed activities.**

(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the state's management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the state's management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the state's management program; or

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the state's management program. The State agency's request shall include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM informal negotiation services provided for in subpart G of this part.

**§ 930.46 Supplemental coordination for proposed activities.**

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the state's management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially differently than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to state coastal management enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the state's management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

**Subpart D—Consistency for Activities Requiring a Federal License or Permit****§ 930.50 Objectives.**

The provisions of this subpart are intended to assure that any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal license or permit activities having interstate coastal effects.

**§ 930.51 Federal license or permit.**

(a) The term "federal license or permit" means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to an applicant. The term "lease,"

means a lease issued by a Federal agency to a non-federal entity that authorizes or approves the use of federal property for a non-federal activity and where no other federal license, permit, authorization or other form of approval, is required. The term lease does not include lease sales conducted by a Federal agency (e.g., outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part if coastal effects are reasonably foreseeable (subpart E of this part addresses activities described in detail in OCS plans).

(b) The term also includes the following types of renewals and major amendments which affect any coastal use or resource:

(1) Renewals and major amendments of federal license or permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which are filed after and are subject to management program changes not in existence at the time of original State agency review; and

(3) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which will cause coastal zone an effect on any coastal use or resource substantially different than those originally reviewed by the State agency.

(c) The term "major amendment" of a federal license or permit activity means any subsequent federal approval that the applicant is required to obtain for modification to the previously reviewed and approved activity and where the activity permitted by issuance of the subsequent approval will affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity.

(d) The term "renewals" of a federal license or permit activity means any subsequent re-issuance, re-approval or extension of an existing license or permit that the applicant is required to obtain for an activity described under paragraph (b) of this section.

(e) The determination of substantially different coastal effects under paragraphs (b)(3) and (c) of this section is made on a case-by-case basis by the State agency, Federal agency and applicant. The opinion of the State agency shall be accorded deference and the terms "major amendment,"

"renewals" and "substantially different" shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

(f) This subpart applies to active applications. If an applicant withdraws its application to the Federal agency, then the consistency process is terminated. If the applicant reapplies to the Federal agency, then a new consistency review process will start. If a Federal agency stops or stays the Federal license or permit application process, then the consistency review period will be stopped or stayed for the same amount of time as for the Federal application process.

**§ 930.52 Applicant.**

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any nation, state, or any state, regional, or local government, who, following management program approval, either files an application for a required individual federal license or permit, or who files a consistency certification for a required general federal license or permit under § 930.31(e) to conduct an activity affecting any coastal use or resource. The term "applicant" does not include Federal agencies applying for federal licenses or permits. Federal agency activities requiring federal licenses or permits are subject to subpart C of this part.

**§ 930.53 Listed federal license or permit activities.**

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the federal license or permit activities shall be described in terms of the specific licenses or permits involved (e.g., Corps of Engineers 404 permits, Coast Guard bridge permits). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the

coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the state's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a state's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a state's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a state has not generally described the geographic location of review, states must follow the conditions for review of unlisted activities under § 930.54 of this subpart.

(b) *General concurrences for minor activities.* To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (see § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor federal license or permit activities and the relevant conditions which are covered by the general concurrence. Minor federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change

requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification should describe the proposed change and identify the regional Federal agency staff the state has contacted for consultation.

(2) A state must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) No federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses or permits of the requirements of this subpart.

**§ 930.54 Unlisted federal license or permit activities.**

(a)(1) With the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, **Federal Register** notices). State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review within 30 days from notice of the license or permit application, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application.

(2) Federal agencies or applicants should provide written notice of unlisted activities to the State agency. Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official state clearinghouse (i.e., the **Federal Register**, draft or final NEPA EISs that are submitted to the State agency, or a state's intergovernmental review process). The notice, whether actual or constructive, shall contain sufficient information for the State agency to learn of the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

(b) The State agency's notification shall also request the Director's approval to review the unlisted activity and shall contain an analysis that

supports the State agency's assertion that coastal effects are reasonably foreseeable. Following State agency notification to the Federal agency, applicant and the Director, the Federal agency shall not issue the license or permit until the requirements of this subpart have been satisfied, unless the Director disapproves the State agency's request to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Director regarding the State agency's request to review the activity. The sole basis for the Director's approval or disapproval of the State agency's request will relate to whether the proposed activity's coastal effects are reasonably foreseeable. The Director shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice. The Director may extend the decision deadline beyond 30 days due to the complexity of the issues or to address the needs of the State agency, the Federal agency, or the applicant. The Director shall notify the relevant parties of the expected length of an extension.

(d) If the Director disapproves the State agency's request, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Director approves the State agency's request, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Director, the applicant shall amend the federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary data and information (see §§ 930.58, 930.62 and 930.63). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (see paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and necessary data and information, whichever period terminates last.

(f) The unlisted activity procedures in this section are provided to ensure that State agencies are afforded an opportunity to review federal license or permit activities with reasonably foreseeable coastal effects. Prior to bringing the issue before the Director, the concerned parties should discuss coastal effects and consistency. The

applicant can avoid delay by simply seeking the State agency's expeditious concurrence rather than waiting for the Director's decision. If an applicant, of its own accord or after negotiations with the State agency, provides a consistency certification and necessary data and information to the State agency, the review shall be deemed to have received the Director's approval, and all of the provisions of this subpart shall apply and the State agency need not request the Director's approval. If an applicant for an unlisted activity has not subjected itself to the consistency process within the 30 day notification period contained in paragraph (a) of this section, the State agency must adhere to the unlisted activity review requirements of this section to preserve its right to review the activity.

**§ 930.55 Availability of mediation for license or permit disputes.**

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted federal license or permit activity is subject to the federal consistency requirement, either party may request the informal negotiation or Secretarial mediation services provided for in subpart G of this part; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (*see* § 930.53) or individually approved by the Director (*see* § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Director approval.

**§ 930.56 State agency guidance and assistance to applicants.**

As a preliminary matter, any applicant for a federal license or permit selected for review by a State agency should obtain the views and assistance of the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the state's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the applicant, the State agency shall identify any enforceable policies applicable to the proposed activity, based upon the information submitted to the State agency.

**§ 930.57 Consistency certifications.**

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the state's approved management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

(b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of state) approved coastal management program and will be conducted in a manner consistent with such program."

**§ 930.58 Necessary data and information.**

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification. Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency);

(2) Information specifically identified in the state's management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include state or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material; and

(3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in

the nature of recommendations.

Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

**§ 930.59 Multiple permit review.**

(a) Applicants shall, to the extent practicable, consolidate related federal license or permit activities affecting any coastal use or resource for State agency review. State agencies shall, to the extent practicable, provide applicants with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license or permit activities found to be consistent with the management program.

**§ 930.60 Commencement of State agency review.**

(a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the certification or information deficiencies, and that:

(i) The State agency's review has not yet begun, and that its review will

commence once the necessary certification or information deficiencies have been corrected; or

(ii) The State agency's review has begun, and that the certification or information deficiencies must be cured by the applicant during the state's review period.

(2) Under paragraph (a)(1) of this section, State agencies shall notify the applicant and the Federal agency, within 30 days of receipt of the completed certification and information, of the date when necessary certification or information deficiencies have been corrected, and that the State agency's consistency review commenced on the date that the complete certification and necessary data and information were received by the State agency.

(3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the six-month review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

#### § 930.61 Public participation.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided in the area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter.

(b) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the state management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the state coastal management program.

(c) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official state gazette, a local newspaper serving areas of the coastal zone likely to be affected by the activity, individual state mailings, and public notice through a state coastal management newsletter. The State agency may require the applicant to provide the public notice. State agencies shall not require that the Federal agency provide public notice. The State agency may rely upon the public notice provided by the Federal agency reviewing the application for the federal license or permit (*e.g.*, notice of availability of NEPA documents) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, whenever possible to minimize duplication of effort and to avoid unnecessary delays.

#### § 930.62 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. The State agency may issue a general concurrence for minor activities (see § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not postmarked within six months following commencement of State agency review.

(b) If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the federal permitting agency may deny approval of the federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not

be approved, it shall immediately notify the applicant and the State agency.

(d) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the federal license or permit to ensure that proposed conditions satisfy federal as well as state management program requirements (see also § 930.4).

#### § 930.63 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Director of the objection. A State agency may assert alternative bases for its objection, as described in paragraphs (b) and (c) of this section.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(d) *Alternatives.* If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal

under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives. See § 930.121(d) for further details regarding alternatives for appeals under subpart H of this part.

(e) A State agency objection shall include a statement to the following effect:

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the [Name of state] coastal management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

#### **§ 930.64 Federal permitting agency responsibility.**

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the federal license or permit except as provided in subpart H of this part.

#### **§ 930.65 Remedial action for previously reviewed activities.**

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and state requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the state's management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the state's management program; or

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the state's management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the state's management program;

(2) Supporting information; and

(3) A request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the state's management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the state's management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

#### **§ 930.66 Supplemental coordination for proposed activities.**

(a) For federal license or permit proposed activities that were previously determined by the State agency to be consistent with the state's management program, but which have not yet begun, applicants shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed activity that are relevant to state coastal management enforceable policies; or (2) There are significant new circumstances or information relevant to the proposed

activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the state's management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicants to notify State agencies.

### **Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities**

#### **§ 930.70 Objectives.**

The provisions of this subpart are intended to assure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved state coastal management programs.

#### **§ 930.71 Federal license or permit activity described in detail.**

The term "federal license or permit activity described in detail" means any activity requiring a federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

#### **§ 930.72 Person.**

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any state; the federal government; any state, regional, or local government; or any entity of such federal, state, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail federal license or permit activities.

#### **§ 930.73 OCS plan.**

(a) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the

Secretary of the Interior or designee following management program approval and which describes in detail federal license or permit activities.

(b) The requirements of this subpart do not apply to federal license or permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

**§ 930.74 OCS activities subject to State agency review.**

Except for states which do not anticipate coastal effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail federal license or permit activities affecting any coastal use or resource.

**§ 930.75 State agency assistance to persons.**

As a preliminary matter, any person intending to submit to the Secretary of the Interior and OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the state's management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

**§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.**

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Identify all activities described in detail in the plan which require a federal license or permit and which will have reasonably foreseeable coastal effects;

(b) Submit necessary data and information pursuant to § 930.58;

(c) When satisfied that the proposed activities meet the federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification and necessary data and information. The Secretary of the Interior or designee shall furnish the State agency with a copy of the OCS plan (excluding proprietary information), necessary data

and information and consistency certification.

(d) The person's consistency certification shall be in the following form:

The proposed activities described in detail in this plan comply with (name of state(s)) approved coastal management program(s) and will be conducted in a manner consistent with such program(s).

**§ 930.77 Commencement of State agency review and public notice.**

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.76 shall not extend the date of commencement of State agency review.

(2) To assess consistency, the State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.33 and 250.34) and OCS information program (*see* 30 CFR part 252) regulations and necessary data and information (*see* 15 CFR 930.58).

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with § 930.61.

**§ 930.78 State agency concurrence or objection.**

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Director of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the commencement of the State agency's review. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed if the

State agency's response to the consistency certification is not postmarked within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with § 930.63.

**§ 930.79 Effect of State agency concurrence.**

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time federal applications are actually filed for the federal licenses or permits to which such concurrence applies, unless the activities, or effects from the activities on any coastal use or resource, have substantially changed. If the person's request for a federal license or permit proposes activities which have substantially changed from the activities described in detail in the OCS plan, the person shall submit an amended plan. The amended plan shall be submitted to the Secretary of the Interior or designee along with a consistency certification and necessary data and information pursuant to § 930.58. The determination of whether an activity or the coastal effects of an activity have substantially changed is made on a case-by-case basis by the State agency, MMS and the person. The opinion of the State agency shall be accorded deference and "substantially changed" shall be construed broadly to ensure that the State agency has the opportunity to review substantially different coastal effects not previously reviewed.

(b) Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

**§ 930.80 Federal permitting agency responsibility.**

Following receipt of a State agency objection to a consistency certification related to federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue

any of such licenses or permits except as provided in subpart H of this part.

**§ 930.81 Multiple permit review.**

(a) A person submitting a consistency certification for federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related federal license or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject to State agency consistency review (*e.g.*, Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval:

(1) For those OCS-related license or permit activities found by the State agency to be consistent with the management program; and

(2) For the license or permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

**§ 930.82 Amended OCS plans.**

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to

the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the state's management program.

**§ 930.83 Review of amended OCS plans; public notice.**

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§ 930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

**§ 930.84 Continuing State agency objections.**

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in § 930.80 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§ 930.82 through 930.83.

**§ 930.85 Failure to comply substantially with an approved OCS plan.**

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail OCS plans to make certain that such activities continue to conform to both federal and state requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim

shall be sent to the person and the Director.

(c) If, after 30 days following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or State agency may file a written objection with the Director. If the Director finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Director the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Director and the Minerals Management Service, pending approval of the amended or new OCS plan. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Director finds that one or more of the activities described in detail in the OCS plan which affects any coastal use or resource are being conducted or are having an effect on any coastal use or resource substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the state's management program. The Director may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Director's consideration.

**Subpart F—Consistency for Federal Assistance to State and Local Governments**

**§ 930.90 Objectives.**

The provisions of this subpart are intended to assure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved coastal managements programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

**§ 930.91 Federal assistance.**

The term "federal assistance" means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

**§ 930.92 Applicant agency.**

The term "applicant agency" means any unit of state or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

**§ 930.93 Intergovernmental review process.**

The term "intergovernmental review process" describes the procedures established by states pursuant to E.O. 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of federal financial assistance to applicant agencies.

**§ 930.94 State review process for consistency.**

(a) States with approved coastal management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review process or by direct submission to the State agency, for any proposed federal assistance activity that:

- (1) Is listed in the management program and occurring within the coastal zone (*see* § 930.95(a)) or within a described geographic area outside of the coastal zone (*see* § 930.95(b)), or
- (2) Will have reasonably foreseeable effects on any coastal use or resource.

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the state management program.

**§ 930.95 Guidance provided by the State agency.**

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (*e.g.*, coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area (*see* § 930.98.)

**§ 930.96 Consistency review.**

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal

assistance to ensure that proposed conditions satisfy federal requirements as well as state management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to § 930.63.

**§ 930.97 Federal assisting agency responsibility.**

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part

**§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.**

(a) State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (*e.g.*, by use of the intergovernmental review process, review of NEPA documents **Federal Register**) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the state in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in § 930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

(b) If within the permitted time period the State agency notifies the Federal agency of its objection to a proposed Federal assistance activity, the Federal agency shall not provide assistance to the applicant agency except as provided in subpart H of this part.

**§ 930.99 Availability of mediation for federal assistance disputes.**

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the informal negotiation or

Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

**§ 930.100 Remedial action for previously reviewed activities.**

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and state requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the state's management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the state management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the state's management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the state's management program;

(2) Supporting information; and

(3) A request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the state's management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinstate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the state's management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

**§ 930.101 Supplemental coordination for proposed activities.**

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the state's management program, but which have not yet begun, the applicant agency shall further coordinate with the State agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to state management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the state's management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

**Subpart G—Secretarial Mediation**

**§ 930.110 Objectives.**

The purpose of this subpart is to describe negotiation and mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

**§ 930.111 Informal negotiations.**

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

**§ 930.112 Request for mediation.**

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

**§ 930.113 Public hearings.**

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who may, if necessary, schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

**§ 930.114 Secretarial mediation efforts.**

(a) If a hearing is held, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

**§ 930.115 Termination of mediation.**

Mediation shall terminate:

(a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,

(b) If one of the agencies withdraws from mediation,

(c) In the event the agencies fail to reach a resolution of the disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or

(d) For other good cause.

**§ 930.116 Judicial review.**

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

**Subpart H—Appeal to the Secretary for Review Related to the Objectives or Purposes of the Act and National Security Interests**

**§ 930.120 Objectives.**

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the state's a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

**§ 930.121 Consistent with the objectives or purposes of the Act.**

A federal license or permit activity, or a federal assistance activity, is "consistent with the objectives or purposes of the Act" if it satisfies each of the following four requirements:

(a) The activity furthers, in more than a de minimis way, one or more of the competing national objectives or purposes contained in section 302 or section 303 of the Act,

(b) When performed separately or when its cumulative effects are considered, the national interest furthered by the activity outweighs the activity's adverse coastal effects,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's management program. When determining whether a reasonable alternative is available, the Secretary may consider but is not limited to considering, previous appeal decisions, alternatives described in objection letters and alternatives and other new information described during the appeal.

**§ 930.122 Necessary in the interest of national security.**

A federal license or permit activity, or a federal assistance activity, is "necessary in the interest of national security" if a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views

of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

**§ 930.123 Appellant and Federal agency.**

(a) The "appellant" is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.

(b) For the purposes of this subpart, the "Federal agency" is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.

**§ 930.124 Computation of time.**

(a) The day that any period of time allowed or prescribed by these rules begins, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a legal holiday in which case the period runs until the next day which is not one of the aforementioned days.

(b) Whenever a party is required to act within a prescribed time period after receipt of a document or notice and the notice or document is provided to the party by mail, 3 days shall be added to the prescribed period of time.

**§ 930.125 Notice of appeal to the Secretary.**

(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project with a value of \$1 million dollars or more shall be considered a major appeal and the application fee is \$500.00. The application fee for all other projects is \$200.00. Upon review of the notice of appeal, the Secretary may determine that a project valued at less than \$1 million is likely to involve significant administrative costs to the agency and assess the \$500.00 application fee which shall be due upon receipt of notice thereof.

(c) The appellant shall send a copy of the notice of appeal to the objecting State agency and the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(d) No extension of time will be permitted for the filing of a notice of appeal.

(e) The Secretary may waive the application fee and processing fee if the appellant demonstrates that such fees impose an economic hardship. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit to the Secretary the fees within 20 days of receipt of the Secretary's denial. If the fee is not received on the 20th day, then the Secretary shall dismiss the appeal.

**§ 930.126 Consistency appeal processing fees.**

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing such appeals under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the **Federal Register** Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) (16 U.S.C. 1465(a)(2)) and 930.131 of this subpart.

**§ 930.127 Briefs and supporting data and information.**

(a) The Secretary shall establish a schedule of dates and times for submission of the briefs, supporting data and information by the appellant and the State agency. The schedule shall include a time for the submission of a response and any relevant supporting information from the State agency.

(b) Both the appellant and State agency shall file copies of their briefs, supporting materials and all requests and communications with the Secretary, with each other, and the Assistant General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910.

(c) The Secretary may approve a request for an extension of time for submission of briefs and supporting information so long as the request is filed within the time period prescribed in the briefing schedule established under paragraph (a) of this section. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

**§ 930.128 Public notice and comment period.**

(a) The Secretary shall provide timely public notice of the appeal after the receipt of the notice of appeal, and payment of appropriate application fees. At a minimum, public notice shall be

provided in the **Federal Register** and the immediate area of the coastal zone which is likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal. The public shall be afforded no less than 30 days to comment on the appeal. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section.

(c) The Secretary shall afford interested federal agencies, including the Federal agency whose proposed action is the subject of the appeal, with an opportunity to comment on the appeal. The Secretary shall afford notice to the federal agencies of the time for filing their comments.

(d) Requests for extensions of time to provide comments may be made pursuant to § 930.127(c).

**§ 930.129 Dismissal, remand, and stay of appeals.**

(a) The Secretary may dismiss an appeal for good cause. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit the supporting information within the required period or approved extension period;

(3) Failure of the appellant to pay a required fee;

(4) The Federal agency denies the federal license, permit or assistance application;

(5) Failure of the appellant to base the appeal on grounds that the proposed activity either is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

(6) Failure of the State agency to properly lodge its consistency objection in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part. The Secretary shall make this determination as a threshold matter if raised by the appellant, and after providing an opportunity to the State agency to respond to the appellant's allegations.

(b) The Secretary may stay his review and remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the state's management program if significant new information relevant to the State's objection, that was not provided to the State agency as part of its review, is submitted to the Secretary by the appellant, the public or a federal agency.

(c) The Secretary may stay the processing of an appeal on her own initiative or upon request of an appellant or State agency for the following purposes:

(1) To allow additional information to be developed relevant to compliance with the Clean Air Act, as amended, and/or the Federal Water Pollution Control Act, as amended,

(2) To allow mediation or settlement negotiations to occur between the applicant and State agency,

(3) To allow for remand pursuant to paragraph (b) of this section;

(4) A stay shall not be granted for more than one year.

**§ 930.130 Public hearings.**

The Secretary may hold a public hearing in response to a request or on his own initiative. If a hearing is held by the Secretary it shall be guided by the procedures described within § 930.113.

**§ 930.131 Closure of the decision record and issuance of decision.**

(a)(1) At such time as the Secretary shall deem appropriate, but no sooner than 30 days after the close of the public comment period, the Secretary shall publish in the **Federal Register** a notice stating that the decision record is closed and that no further information, briefs or comments will be considered in deciding the appeal.

(2) Where a state agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in § 930.129(b) and (c).

(b) No later than 90 days after the closure of the decision record the Secretary shall issue a decision or publish a notice in the **Federal Register** explaining why a decision cannot be issued at that time. The Secretary shall issue a decision within 45 days of the publication of such notice.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(e)(1) If the Secretary finds that the proposed activity is consistent with the

objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

**§ 930.132 Review initiated by the Secretary.**

(a) The Secretary may, on her own initiative, choose to consider whether a federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review shall only be initiated after the completion of State agency review pursuant to the relevant subpart. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

**Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects**

**§ 930.150 Objectives.**

(a) A federal activity may affect coastal uses or resources of a state other than the state in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the coastal management program of each affected state.

(b) The application of the federal consistency requirement to activities having interstate coastal effects is addressed by this subpart in order to encourage cooperation among states in dealing with activities having interstate coastal effects, and to provide states, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

**§ 930.151 Interstate coastal effect.**

The term "interstate coastal effect" means any reasonably foreseeable effect resulting from a federal action occurring in one state of the United States on any

coastal use or resource of another state that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term "affects" means have an effect on. Effects on any coastal use or resource may also be referred to as "coastal effects."

**§ 930.152 Application.**

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a state with a federally-approved coastal management program, regardless of the activities' locations (including states without a federally approved coastal management program). The federal consistency requirement does not alter a coastal state's jurisdiction. The federal consistency requirement does not give states the authority to review the application of laws, regulations, or policies of any other state. Rather, the Act allows a state coastal management program to review federal actions and may preclude federal action as a result of a state objection, even if the objecting state is not the state in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

**§ 930.153 Coordination between states in developing coastal management policies.**

Coastal states are encouraged to give high priority to:

(a) Coordinating state coastal management planning, policies, and programs with respect to contiguous areas of such states;

(b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and

(c) Establishing an effective mechanism, and adopting a federal-state consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

**§ 930.154 Listing activities subject to routine interstate consistency review.**

(a) *Geographic location of listed activities.* Each coastal state intending to conduct a consistency review of federal activities occurring in another state shall:

(1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the state intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each state must notify and consult with the state in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the state's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* Coastal states shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each state submitting this program change shall include evidence of consultation with states in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other states and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal state that fails to list

federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other states, until the state meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal states have the opportunity to review relevant activities occurring in other states. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at § 930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes effect. In that time a state may review an interstate activity pursuant to § 930.54 of this part. After the transition period states must comply with this subpart in order to review interstate activities.

**§ 930.155 Federal and State agency coordination.**

(a) *Identifying activities subject to the consistency requirement.* The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of state management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected states.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect on any coastal use or resource, shall notify each affected coastal state of the proposed activity. State agencies may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Federal and State agency coordination.* Following notification of the proposed activity, the Federal agency or applicant or applicant agency shall coordinate with all affected states with approved coastal management programs in evaluating the consistency of the activity with the enforceable policies of each such program.

(d) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each state intending to review an activity occurring in another state must notify the applicant or applicant agency (if any), the Federal agency, the state in which the activity will occur (either the state's coastal management program, or if the state does not have a coastal management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The state's notice to the parties must be postmarked by the 30th day after receipt of the consistency determination or certification. If a state fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the state in which the activity

will occur, and the Director, of its intent to review the activity, then the state waives its right to review the activity for consistency. The waiver does not apply where the state intending to review the activity does not receive notice of the activity.

**§ 930.156 Content of a consistency determination or certification and State agency response.**

(a) In addition to the applicable requirements for consistency determinations and certifications contained in subparts C, D and E of this part, the determination or certification shall include a statement that the Federal agency or applicant has coordinated with affected states with approved management programs in developing the proposed activity.

(b) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected states with approved management programs.

(c) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

**§ 930.157 Mediation and informal negotiations.**

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected states, relevant Federal agencies, and applicants or applicant agencies. The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

[FR Doc. 00-8982 Filed 4-13-00; 8:45 am]

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# Federal Register

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**Friday,  
April 14, 2000**

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**Part III**

## **Environmental Protection Agency**

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40 CFR Part 9 et al.

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**Revisions to the Interim Enhanced  
Surface Water Treatment Rule (IESWTR),  
the Stage 1 Disinfectants and Disinfection  
Byproducts (Stage 1 DBPR), and Revisions  
to State Primacy Requirements To  
Implement the Safe Drinking Water Act  
(SDWA) Amendments; Final Rule and  
Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9, 141, and 142**

[FRL-6575-9]

RIN 2040-AD43

**Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR), and Revisions to State Primacy Requirements To Implement the Safe Drinking Water Act (SDWA) Amendments**

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

**ACTION:** Direct final rule.

**SUMMARY:** This direct final action will make minor revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) which were published December 16, 1998 and the Revisions to State Primacy Requirements to Implement Safe Drinking Water Act (SDWA) Amendments (Primacy Rule) published April 28, 1998. This Direct Final Rule revises the compliance dates for the IESWTR and the Stage 1 DBPR by shifting them back approximately two weeks from the middle of the month to the beginning of the following month. This change will shift the monitoring periods to coincide with calendar quarters which will facilitate the implementation of both rules. This action will also extend the use of new analytical methods included in these rules to compliance monitoring for long

standing drinking water regulations for total trihalomethanes. The revisions also include several changes to the regulatory language for clarification. In addition, this document corrects typographical errors, replaces inadvertently deleted text, and clarifies some of the new regulatory provisions found in the published rules. Lastly, this document contains corrections to the Primacy Rule. These regulations relate to the requirements and procedures for States to obtain primary enforcement authority (primacy) for the Public Water System Supervision (PWSS) program under the Safe Drinking Water Act as amended by the 1996 Amendments.

**DATES:** This regulation is effective on June 13, 2000 without further notice unless EPA receives adverse comment by May 15, 2000. If EPA receives such comment, EPA will withdraw this direct final rule before its effective date by publishing a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on April 28, 2000 as provided in 40 CFR 23.7.

**ADDRESSES:** Send written comments to the Comment Clerk, docket number W-99-11, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The record for this rule has been established under docket number W-99-11. The record is available for inspection 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower

Basement, US EPA, 401 M Street, SW, Washington DC. The rule making records for the original IESWTR and the Stage 1 DBPR are also available for inspection at the Water Docket. For access to docket materials, please call 202-260-3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW, East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. No facsimiles (faxes) will be accepted.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC-4606), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426-4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

The entities regulated by the IESWTR and Stage 1 DBPR, and thus by these revisions to those rules, are public water systems. These include community and noncommunity water systems. States are subject to the primacy rule requirements as revised.

Regulated categories and entities include the following:

Category	Examples of potentially regulated entities	SIC
State, Tribal, and Territorial Governments.	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that operate public water systems required to monitor under the IESWTR or Stage 1 DBPR.	9511
Industry .....	Private operators of public water systems required to monitor under the IESWTR or Stage 1 DBPR	9511
Municipalities .....	Municipal operators of public water systems required to monitor under the IESWTR or Stage 1 DBPR.	9511

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.2, 141.70, 141.130, 141.170, 142.2, 142.3, and 142.10 of title 40 of the Code of Federal Regulations. If you have questions

regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the Regional contacts that follow.

**Regional Contacts**

- I. Katie Leo, Water Supply Section 1 Congress Street, Suite 1100-CMU, Boston, MA 02114, (617) 918-1623
- II. Michael Lowy, Water Supply Section, 290 Broadway 24th Floor, New York, NY 10007-1866, (212) 637-3830
- III. Jason Gambatase, Drinking Water Section (3WM41), 1650 Arch Street,

- Philadelphia, PA 19103-2029, (215) 814-5759
- IV. David Parker, Water Supply Section, 345 Courtland Street, Atlanta, GA 30365, (404) 562-9460
- V. Miguel A. Del Toral, Safe Drinking Water Branch, 77 W. Jackson Blvd. (WD-15J), Chicago, IL 60604, (312) 886-5253
- VI. Blake L. Atkins, Drinking Water Section, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-2297
- VII. Ralph Flournoy, Drinking Water/ Ground Water Management Branch,

901 N. 5th St., Kansas City, KS 66101, (913) 551-7374

VIII. Bob Clement, Municipal Systems Unit (8P-W-MS), 999 18th Street, Suite 500, Denver, CO 80202-2466, (303) 312-6653

IX. Bruce Macler, Water Supply Section, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1884

X. Wendy Marshall, Drinking Water Unit, 1200 Sixth Avenue (OW-136), Seattle, WA 98101, (206) 553-1890

### Abbreviations

CWS: Community water system

DBPR: Disinfectant and Disinfection Byproducts Rule

EPA: Environmental Protection Agency  
GWUDI: Ground water under the direct influence of surface water

HAA5: Haloacetic Acids (monochloroacetic, dichloroacetic, trichloroacetic, monobromoacetic and dibromoacetic acids)

ICR: Information Collection Request

IESWTR: Interim Enhanced Surface Water Treatment Rule

MCL: Maximum contaminant level  
MCLG: Maximum contaminant level goal

MRDL: Maximum residual disinfectant level

MRDLG: Maximum residual disinfectant level goal

NPDWR: National Primary Drinking Water Regulation

NTNCWS: Non-transient, non-community water system

OMB: Office of Management and Budget

PWS: Public water system

RFA: Regulatory Flexibility Analysis

SDWA: Safe Drinking Water Act

TNCWS: Transient, non-community water system

TOC: Total organic carbon

TTHM: Total Trihalomethanes

(chloroform, bromodichloromethane, dibromochloromethane, and bromoform)

UMRA: Unfunded Mandates Reform Act

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##### F. National Technology Transfer and Advancement Act

##### G. Executive Order 12898—Federal Actions to Address Environmental

Justice in Minority Populations and Low-Income Populations

H. Executive Order 13132—Federalism

I. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

J. Administrative Procedure Act

K. Congressional Review Act

### I. Background

On December 16, 1998, EPA published the final Interim Enhanced Surface Water Treatment Rule (IESWTR; 63 FR 69478) and Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR; 63 FR 69390). On April 28, 1998, EPA published the Revisions to State Primacy Requirements to Implement the SDWA Amendments (63 FR 23362).

*IESWTR*: The IESWTR was designed to improve control of microbial pathogens, including specifically the protozoan *Cryptosporidium*, in drinking water and to address risk trade-offs with disinfection byproducts. The IESWTR builds upon the treatment technique requirements of the Surface Water Treatment Rule. Key provisions established in the final IESWTR include: a Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium*; 2-log *Cryptosporidium* removal requirements for systems that filter; strengthened combined filter effluent turbidity performance standards and individual filter turbidity monitoring provisions; disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of ground water under the direct influence of surface water (GWUDI) and in the watershed control requirements for unfiltered public water systems; requirements for covers on new finished water reservoirs; and sanitary surveys for all surface water and GWUDI systems regardless of size.

The IESWTR applies to public water systems that use surface water or GWUDI and serve 10,000 or more people, except that the rule requires primacy States to conduct sanitary surveys for all surface water and GWUDI systems regardless of size.

EPA believes that implementation of the IESWTR will significantly reduce the level of *Cryptosporidium* in finished drinking water supplies through improvements in filtration and reduce the likelihood of the occurrence of cryptosporidiosis outbreaks by providing an increased margin of safety against such outbreaks for some systems. In addition, the filtration provisions of the rule are expected to

increase the level of protection from exposure to other pathogens (*i.e.*, *Giardia* or other waterborne bacterial or viral pathogens).

*Stage 1 DBPR*: The Stage 1 DBPR was designed to reduce the levels of disinfectants and disinfection byproducts in drinking water supplies. The DBPR established maximum residual disinfectant level goals (MRDLGs) for chlorine, chloramines, and chlorine dioxide; maximum contaminant level goals (MCLGs) for four trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform), two haloacetic acids (dichloroacetic acid and trichloroacetic acid), bromate, and chlorite; and National Primary Drinking Water Regulations (NPDWRs) for three disinfectants (chlorine, chloramines, and chlorine dioxide), two groups of organic disinfection byproducts (total trihalomethanes (TTHM)—a sum of chloroform, bromodichloromethane, dibromochloromethane, and bromoform; and haloacetic acids (HAA5)—the sum of dichloroacetic acid, trichloroacetic acid, monochloroacetic acid and mono- and dibromoacetic acids), and two inorganic disinfection byproducts (chlorite and bromate). The NPDWRs consist of maximum residual disinfectant levels (MRDLs) for these disinfectants and maximum contaminant levels (MCLs) or treatment techniques for their byproducts. The NPDWRs also include monitoring, reporting, and public notification requirements for these compounds.

The Stage 1 DBPR applies to public water systems that are community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs) that treat their water with a chemical disinfectant for either primary or residual treatment and to CWSs and NTNCWSs that purchase water and provide water that contains a chemical disinfectant. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems (TNCWSs).

The Stage 1 DBPR provides public health protection for households that were not previously covered by drinking water rules for disinfection byproducts. In addition, the rule, for the first time, provides public health protection from exposure to haloacetic acids, chlorite (a major chlorine dioxide byproduct) and bromate (a major ozone byproduct).

*Primacy Rule*: This rule codified new statutory requirements under the 1996 Amendments to the Safe Drinking Water Act (SDWA) involving changes to the

process and requirements for States to obtain or retain primary enforcement authority for the Public Water System Supervision program under § 1413 of the SDWA and to the definition of a "public water system" under § 1401 of the SDWA.

## II. Today's Action

### A. IESWTR and Stage 1 DBPR

This document revises the IESWTR and Stage 1 DBPR to move compliance dates to facilitate implementation, correct typographical errors identified in these rules, replace text inadvertently deleted, delete incorrect text, and clarify certain provisions in the final rules. The revisions include the following modifications:

#### *Shifting Compliance Date of Rules:*

This action will revise the compliance dates of both rules by extending them approximately two weeks. This shift will facilitate the implementation of the IESWTR and the Stage 1 DBPR as the monitoring periods for both rules will coincide with calendar quarters and consequently with the monitoring periods for other contaminants.

*New Analytical Methods Use:* This action modifies § 141.30 to extend the use of new analytical methods included in the DBPR § 141.131(b) for compliance monitoring for long standing drinking water regulations for total trihalomethanes.

*Regulated Entities Compliance with Stage 1 DBPR:* Today's rule makes language clarifications in § 141.130(a) to the criteria that determines which systems must meet the new MCLs and MRDLs under the DBPR. The original language specified that systems which "add a chemical disinfectant to the water in any part of the drinking water treatment process" are subject to the rule. Today, EPA is correcting that language to also include systems that "provide water that contains a chemical disinfectant." By setting the original criteria, EPA inadvertently excluded consecutive systems, or those that purchase water, from the requirement to monitor for and meet the MCLs and MRDLs of the DBPR, although such systems were included in regulatory impact analyses and costed as part of the original rule.

*TTHM and HAA5 Monitoring and Compliance Provisions:* The regulatory language addressing TTHM and HAA5 monitoring and compliance determinations has been slightly revised to clarify the intention of the regulatory requirements in § 141.132(b)(1). The first clarification adds language that was inadvertently left out in the final rule. This clarification specifies the criteria

under which surface water systems serving <500 people and ground water systems serving <10,000 people on increased monitoring may return to routine monitoring. Systems on increased monitoring may return to routine monitoring if their TTHM annual average is 0.040 mg/L or less and their HAA5 annual average is 0.030mg/L or less. These values are the same criteria that systems on routine quarterly monitoring must meet in order to be eligible for reduced monitoring. This change is also reflected in the table in § 141.132(b)(1) where the reference to "paragraph c" in the third and fifth entries is replaced by "paragraph (b)(1)(iv)."

The second revision clarifies the requirements for ground water systems serving <10,000 people that after annual sampling show that they have met the requirements for reduced monitoring (one sample per plant every 3 years). In the situation where that sample collected during reduced monitoring exceeds the MCL, there is a concern that the existing language is ambiguous and could be interpreted to require such a system to return to routine monitoring (one sample per plant per year) before being triggered to quarterly monitoring. EPA's intention was to assure that these systems would perform quarterly monitoring immediately following a result that exceeds the MCL. Therefore, EPA has clarified the language to specify the intent of the requirement which is to have such systems immediately triggered to quarterly monitoring, which is consistent with the requirements for the other system categories.

The final clarification for § 141.133(b)(1) is on compliance determination for TTHM and HAA5. The intention of the requirement was that systems monitoring less frequently than quarterly, and that measure TTHM or HAA5 above the MCL, would not be in violation of the MCL until they conduct four consecutive quarters of monitoring under the increased monitoring requirements. (The exceptions to this are when the results of fewer than four quarters will cause the running annual average to exceed the MCL, or if the system fails to collect the four samples over four consecutive quarters, in which case the MCL is calculated based on available data for that monitoring period). This intent is clarified by deleting the last two sentences of § 141.133(b)(1)(i), revising paragraphs (b)(1)(ii) and (iii), and adding new paragraph (b)(1)(iv).

*Chlorite Provisions:* Today's rule also revises two provisions addressing chlorite. First, EPA is correcting the

general requirements for transient non-community water systems (TNCWS) in § 141.130 which incorrectly states that TNCWS must comply with chlorite requirements. This correction is accomplished by deletion of the chlorite reference in that section. Second, EPA is clarifying the monitoring provisions in § 141.131(b) for daily chlorite samples which require the analysis to be performed by a certified lab. Because systems are capable of analyzing by amperometric titration the daily chlorite samples taken at the entrance to the distribution system, language has been added to allow public water systems to be approved for such monitoring to reduce the financial and operational burden on the systems.

*Disinfection Byproduct Precursors Provisions:* This rule also clarifies the public notification requirements related to compliance with DBP precursors under § 141.133 and provides revised language regarding the Step 2 TOC removal requirements under § 141.135 in order to eliminate ambiguous text. This revision clarifies that the submitted bench or pilot-scale tests must be used to determine the alternate enhanced coagulation level. In the table in § 141.135(b)(2), minor revisions correct "<60-120" to read ">60-120" in the heading of the second column and add percentage signs—%—to all values while deleting the word "percent" from the three column headings.

*System Reporting and Recordkeeping:* This revision adds system reporting requirements which were inadvertently omitted from § 141.175 of the IESWTR. Today's rule requires that when a direct or conventional filtration system exceeds the maximum turbidity limit of 1 NTU, the system must inform the State no later than the end of the next business day. Similarly, when a system using alternative filtration technologies exceeds the maximum turbidity level set by the State, the system must inform the State no later than the end of the next business day.

Today's rule also adds clarifying text to the § 141.134 reporting tables. These changes will facilitate a system's reporting requirements for the disinfectant byproducts, disinfectants, and disinfectant byproduct precursors and enhanced coagulation or enhanced softening.

In the section (b) table, all entries in the "You must report" column are revised to add the citation of the MCL and replace the word "exceeded" with "violated." In the second entry, under the second reporting requirement, the phrase "last quarter" is replaced with "last monitoring period," and in the fourth entry, the language in all four

reporting requirements is revised. In the section (c) table, all entries in the "You must report" column are revised to add the citation of the MRDL and replace the word "exceeded" with "violated." In the section (d) table, the first entry is revised by delete the phrase "prior to continuous disinfection" from the first reporting requirement.

*Filtration Provisions:* Revisions to § 141.174 add language to clarify that if there is a failure in the continuous turbidity monitoring equipment and the system is conducting grab sampling, the system must repair the equipment within five working days or it is in violation.

EPA believes that the limited changes to the rules outlined above will only minimally alter the estimates of benefits and costs which are associated with the IESWTR and Stage 1 DBPR. Burden associated with the system reporting requirements in § 141.175(c) are covered in an existing ICR (OMB No. 2040-0090) and the estimates are not expected to change.

#### B. Primacy Rule

The final primacy regulations subject to these corrections increase the time for a State to adopt new or revised Federal regulations from 18 months to two years. Inadvertently, this time increase was not reflected in § 142.12(d)(2) of the final regulations. This rule corrects that error.

In addition, this rule updates the interim primacy provision. Interim primacy gives States full responsibility for implementation and enforcement during the time that EPA reviews the primacy revision application, provided that States have full primacy for all prior National Primary Drinking Water Regulations. When extensions to the time frame for submission of primacy revision applications are granted, States must agree to conditions for rule implementation. These conditions are lifted when a State receives primacy. EPA believes that under the SDWA amendments, these conditions should also be lifted when a State receives interim primacy. Inadvertently, this intent was not reflected in the **Federal Register** of Tuesday, April 28, 1998 (63 FR 23362). Today's change to § 142.12(b)(3)(i) clarifies that the conditions that go with an extension are not necessary after a State receives interim primacy.

### III. Administrative Requirements

#### A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency

must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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 final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

#### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local,

and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule makes minor revisions and corrections to three SDWA regulations. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

#### D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, information collection, reporting and record keeping requirements must be submitted to the Office of Management and Budget (OMB) for approval. Information Collection Request (ICR) documents for the original IESWTR, Stage 1DBPR and Primacy Rule were prepared by EPA and approved by OMB (OMB No.'s 2040-0205, 2040-0204, and 2040-0915 respectively) and copies may be obtained from Sandy Farmer by mail at

OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at: farmer.sandy@epamail.epa.gov, or by calling: (202) 260-2740.

The system reporting requirements contained in § 141.175(c) are covered by the general PWSS program ICR (OMB No. 2040-0090). This ICR calculates the burden associated with reporting turbidity exceedences under § 141.75(a)(5). Although § 141.175(c) alters for large systems the level at which turbidity exceedences are reported, data indicate that such systems already have high compliance rates with the new levels and there would be no significant increase in violations and burden associated with this new level. The Part 9 table is amended in this rule to reflect OMB approval of these reporting requirements.

*E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement under the Administrative Procedure Act or any other statute 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 organizations, and small government jurisdictions. This rule makes only minor revisions, corrections, and clarifications to promulgated regulations that will facilitate the implementation of those regulations. This rule does not impose additional burden on any regulated small entity since impacts were included in the original rule analysis. The additional reporting requirements contained in today's rule apply only to systems that serve 10,000 or more people. Thus, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113 Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g.,

material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action extends the applicability of analytical methods established under the Stage 1 DBPR in the December 16, 1998 **Federal Register**. In developing the Stage 1 DBPR, EPA's process for selecting analytical test methods was consistent with section 12(d) of the NTTAA. EPA performed literature searches to identify analytical methods from industry, academia and voluntary consensus standards, and provided an opportunity for comment. For a more detailed discussion, refer to page 69457 of the Stage 1 DBPR (63 FR 69390, Dec. 16, 1998). Neither the IESWTR nor the Primacy Rule involve standards subject to this Act.

*G. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898—"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994) focuses Federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. Today's changes to the IESWTR, Stage 1 DBPR, and Primacy Rule will not diminish the health protection to minority and low-income populations.

*H. Executive Order 13132—Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations 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 section 6 of 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 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. This rule makes only minor revisions, corrections and clarifications to three SDWA rules that were promulgated in 1998. The result of these revisions, corrections and clarifications will be to facilitate the implementation of these regulations at the State and local levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*I. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments*

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

This rule makes minor revisions, corrections and clarifications to

promulgated regulations. It does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*J. Administrative Procedure Act*

EPA is publishing this rule without prior proposal because it views these changes as noncontroversial amendments and anticipates no adverse comment. The changes simply facilitate implementation of existing rules and correct minor typographical errors, and inadvertently deleted text. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for Revisions to the IESWTR, Stage 1 DBPR and Primacy Rule if adverse comments are filed. This rule will be effective on June 13, 2000 without further notice unless EPA receives adverse comment by May 15, 2000. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804 (2). This rule will be effective June 13, 2000.

**List of Subjects in 40 CFR Parts 9, 141, and 142**

Analytical methods, Drinking water, Environmental protection, Intergovernmental relations, Public utilities, Reporting and recordkeeping

requirements, Reservoirs, Utilities, Water supply, Watersheds.

Dated: April 4, 2000.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735; 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by removing the entry "141.174–141.175" and by adding in numerical order under the indicated heading new entries to read as follows:

**§ 9.1 OMB Approvals Under the Paperwork Reduction Act.**

40 CFR citation	OMB control No.
National Primary Drinking Water Regulations	
141.174(a)–(b) .....	2040–0205
141.175 .....	2040–0205
141.175(a)–(b) .....	2040–0205
141.175(c) .....	2040–0090

**PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS**

3. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

**§ 141.12 [Amended]**

4. Section 141.12 is amended by revising "December 16, 2001" to read "December 31, 2001" and by revising the two occurrences of "December 16, 2003" to read "December 31, 2003".

**§ 141.30 [Amended]**

5. Amend § 141.30 by:  
a. Revising the first sentence of paragraph (e); and

b. In paragraph (h), revising "December 16, 2001" to read "December 31, 2001", and revise the two occurrences of "December 16, 2003" to read "December 31, 2003".

The revision reads as follows:

**§ 141.30 Total trihalomethanes sampling, analytical and other requirements.**

\* \* \* \* \*  
(e) Sampling and analyses made pursuant to this section shall be conducted by one of the total trihalomethanes methods as directed in § 141.24(e), and the Technical Notes on Drinking Water Methods, EPA–600/R–94–173, October 1994, which is available from NTIS, PB–104766, or in § 141.131(b). \* \* \*

**§ 141.64 [Amended]**

6. Amend § 141.64 by:  
a. In paragraph (b)(1), revising "December 16, 2001" to read "January 1, 2002" and revising "December 16, 2003" to read "January 1, 2004"; and  
b. In paragraph (b)(2), revise "December 16, 2003" to read "December 31, 2003".

**§ 141.65 [Amended]**

7. In § 141.65(b)(1) and (b)(2), revise "December 16, 2001" to read "January 1, 2002" and revise "December 16, 2003" to read "January 1, 2004".

**§ 141.71 [Amended]**

8. Section 141.71(b)(6) is amended by revising the two occurrences of "December 17, 2001" to read "December 31, 2001".

**§ 141.73 [Amended]**

9. Amend § 141.73 by:  
a. In paragraph (a)(3), revising "December 17, 2001" to read "January 1, 2002"; and  
b. In paragraph (d), revising "December 17, 2001" to read "January 1, 2002".

**§ 141.130 [Amended]**

10. Amend § 141.130 by:  
a. Revising paragraph (a)(1); and  
b. In paragraphs (b)(1) and (b)(2), revising "December 16, 2001" to read "January 1, 2002" and revising "December 16, 2003" to read "January 1, 2004"; and in paragraph (b)(2), removing the phrase: "and chlorite" from the first and second sentences.

The revision reads as follows:

**§ 141.130 General requirements.**

(a) \* \* \*  
(1) The regulations in this subpart establish criteria under which

community water systems (CWS) and nontransient, noncommunity water systems (NTNCWS) which add a chemical disinfectant to the water in any part of the drinking water treatment process or which provide water that contains a chemical disinfectant, must modify their practices to meet MCLs and MRDLs in §§ 141.64 and 141.65, respectively, and must meet the treatment technique requirements for disinfection byproduct precursors in § 141.135.

**§ 141.131 [Amended]**

11. Amend § 141.131 by revising the first sentence of paragraph (b)(2) and adding paragraph (b)(3) to read:

**§ 141.131 Analytical requirements.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) \* \* \*

(2) Analysis under this section for disinfection byproducts must be conducted by laboratories that have received certification by EPA or the State, except as specified under paragraph (b)(3) of this section. \* \* \*

(3) A party approved by EPA or the State must measure daily chlorite samples at the entrance to the distribution system.

- \* \* \* \* \*

**§ 141.132 [Amended]**

12. Amend § 141.132 by:

- a. In paragraph (a)(2), revising the reference “§ 142.16(f)(5)” to read “§ 142.16(h)(5)”;
- b. In paragraph (b)(1)(i), revising the third and fifth entries and the second footnote in the table;
- c. Amend paragraph (b)(1)(iii) by revising the second sentence and adding a new third sentence, redesignating paragraph (b)(1)(iv) as (b)(1)(v), adding a new paragraph (b)(1)(iv); and
- d. Revising the first sentence in paragraph (c)(1)(i).

The revisions read as follows:

**§ 141.132 Monitoring requirements.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) \* \* \*

**ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5**

Type of system	Minimum monitoring frequency	Sample location in the distribution system
* * * * *	* * * * *	* * * * *
Subpart H system serving fewer than 500 persons.	One sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time. <sup>1</sup> If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in paragraph (b)(1)(iv) of this section.
* * * * *	* * * * *	* * * * *
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One sample per year per treatment plant <sup>2</sup> during month of warmest water temperature.	Locations representing maximum residence time. <sup>1</sup> If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in paragraph (b)(1)(iv) of this section for reduced monitoring.
* * * * *	* * * * *	* * * * *

<sup>1</sup> If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

<sup>2</sup> Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with State approval in accordance with criteria developed under § 142.16(h)(5) of this chapter.

(iii) \* \* \* Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (b)(1)(i) of this section (sample location column) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L or 0.045 mg/L for TTHMs or HAA5 respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHMs annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L, the system must go to increased monitoring identified in paragraph (b)(1)(i) of this section (sample location column) in the quarter immediately following the quarter in which the system exceeds

0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

(iv) Systems on increased monitoring may return to routine monitoring if TTHM annual average is ≤0.040 mg/L and HAA5 annual average is ≤0.030 mg/L.

- \* \* \* \* \*
- (c) \* \* \*
- (1) \* \* \*

(i) *Routine monitoring.* Community and nontransient noncommunity water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system when total coliforms are sampled, as specified in § 141.21. \* \* \*

**§ 141.133 [Amended]**

13. Amend § 141.133 by:

- a. In the first sentence of paragraph (a)(1), revising “system’s” to read “system”, and revising the first occurrence of “failure” to read “fails” and
- b. Removing the last two sentences of paragraph (b)(1)(i), revising paragraphs (b)(1)(ii) and (iii), and adding new paragraph (b)(1)(iv);
- c. Removing the phrase “of quarterly averages” in the second sentence of paragraph (c)(1)(i) and adding the phrase “in addition to reporting to the State pursuant to § 141.134” to the end of the second and third sentences in paragraph (c)(2)(i) and the second and third sentences of paragraph (c)(2)(ii); and
- d. In paragraph (d), revising the reference “§ 141.135(b)” in the first

sentence to read “§ 141.135(c)” adding a sentence to the end of paragraph (d).

The revisions and additions read as follows:

**§ 141.133 Compliance requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of § 141.132(b)(1) does not exceed the MCLs in § 141.64. If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant and such a system is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to

exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(iii) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32 in addition to reporting to the State pursuant to § 141.134.

(iv) If a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

\* \* \* \* \*

(d) \* \* \* For systems required to meet Step 1 TOC removals, if the value calculated under § 141.135(c)(1)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to § 141.32, in addition to reporting to the State pursuant to § 141.134.

**§ 141.134 [Amended]**

14. Amend § 141.134 by:

- a. In paragraph (b), revising the table.
- b. In paragraph (c), revising the table; and
- (c). In paragraph (d), revising the first entry.

The revisions read as follows:

**§ 141.134 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(b) \* \* \*

If you are a . . .	You must report. . . <sup>1</sup>
(1) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) on a quarterly or more frequent basis.	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of all samples taken in the last quarter. (iv) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters. (v) Whether, based on § 141.133(b)(1), the MCL was violated.
(2) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) less frequently than quarterly (but at least annually).	(i) The number of samples taken during the last year. (ii) The location, date, and result of each sample taken during the last monitoring period. (iii) The arithmetic average of all samples taken over the last year. (iv) Whether, based on § 141.133(b)(1), the MCL was violated.
(3) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) less frequently than annually.	(i) The location, date, and result of the last sample taken. (ii) Whether, based on § 141.133(b)(1), the MCL was violated.
(4) System monitoring for chlorite under the requirements of § 141.132(b).	(i) The number of entry point samples taken each month for the last 3 months. (ii) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter. (iii) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system. (iv) Whether, based on § 141.133(b)(3), the MCL was violated, in which month, and how many times it was violated each month.
(5) System monitoring for bromate under the requirements of § 141.132(b).	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. (iv) Whether, based on § 141.133(b)(2), the MCL was violated.

<sup>1</sup> The State may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(c) \* \* \*

If you are a . . .	You must report. . . <sup>1</sup>
System monitoring for chlorine or chloramines under the requirements of § 141.132(c).	(1) The number of samples taken during the last quarter. (2) The monthly arithmetic average of all samples taken in each month for the last 12 months. (3) The arithmetic average of all monthly averages for the last 12 months. (4) Whether, based on § 141.133(c)(1), the MRDL was violated.
System monitoring for chlorine dioxide under the requirements of § 141.132(c).	(1) The dates, results, and locations of samples taken during the last quarter. (2) Whether, based on § 141.133(c)(2), the MRDL was violated.

If you are a . . .

You must report. . .<sup>1</sup>

(3) Whether the MRDL was exceed in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

<sup>1</sup> The State may choose to perform calculations and determine whether the MRDL was exceeded, in lieu of having the system report that information.

(d) \* \* \*

If you are a . . .

You must report. . .<sup>1</sup>

System monitoring monthly or quarterly for TOC under the requirements of § 141.132(d) and required to meet the enhanced coagulation or enhanced softening requirements in § 141.135(b)(2) or (3).

- (1) The number of paired (source water and treated water) samples taken during the last quarter.
- (2) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.
- (3) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.
- (4) Calculations for determining compliance with the TOC percent removal requirements, as provided in § 141.135(c)(1).
- (5) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in § 141.135(b) for the last four quarters.

\* \* \* \* \*

<sup>1</sup> The State may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the system report that information.

**§ 141.135 [Amended]**

15. Amend § 141.135 by:

a. In paragraph (a)(2)(iii), revising “as required by” in the first sentence of to read “according to”, and revising “June 16, 2005” to read “June 30, 2005”;

b. In paragraph (b), removing the phrase “(as aluminum)” wherever it appears and revising paragraph (b)(4);

c. In paragraph (b)(2), revising the table entitled: “Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Subpart H Systems Using Conventional Treatment,” and;

d. In paragraph (c)(1), revising the first sentence.

The revisions read as follows:

**§ 141.135 Treatment technique for control of disinfection byproduct (DBP) precursors.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) \* \* \*
- (2) \* \* \*

**STEP 1 REQUIRED REMOVAL OF TOC BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT<sup>1, 2</sup>**

Source-water TOC, mg/L	Source-water alkalinity, mg/L as CaCO <sup>3</sup>		
	0–60 (percent)	>60–120 (percent)	>120 <sup>3</sup> (percent)
>2.0–4.0 .....	35.0	25.0	15.0
>4.0–8.0 .....	45.0	35.0	25.0
>8.0 .....	50.0	40.0	30.0

<sup>1</sup> Systems meeting at least one of the conditions in paragraph (a)(2)(i)–(vi) of this section are not required to operate with enhanced coagulation.

<sup>2</sup> Softening system meeting one of the alternative compliance criteria in paragraph (a)(3) of this section are not required to operate with enhanced softening.

<sup>3</sup> System practicing softening must meet the TOC removal requirements in this column.

(3) \* \* \*

(4) *Alternate minimum TOC removal (Step 2) requirements.* Applications made to the State by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under paragraph (b)(3) of this section must include, as a minimum, results of bench- or pilot-scale testing conducted under paragraph (b)(4)(i) of this section. The submitted bench- or pilot-scale testing must be

used to determine the alternate enhanced coagulation level.

(c) \* \* \*

(1) Subpart H systems other than those identified in paragraph (a)(2) or (a)(3) of this section must comply with requirements contained in paragraphs (b)(2) or (b)(3) of this section. \* \* \*

\* \* \* \* \*

**§ 141.170 [Amended]**

16. Section 141.170(a) is amended by revising “December 17, 2001” to read “January 1, 2002”.

**§ 141.172 [Amended]**

17. Amend § 141.172 by:

a. In paragraph (a)(2)(iii)(A), revising “March 16, 2000” to read “March 31, 2000”;

b. In paragraph (a)(5)(i), revising “December 16, 1999” to read “December 31, 1999” wherever it appears;

c. In paragraph (a)(5)(iii), revising "March 16, 2000" to read "March 31, 2000";

d. In paragraph (b)(2) introductory text, revising "March 16, 2000" to read "April 1, 2000";

e. In paragraph (b)(3)(i), revising "March 16, 2000" to read "March 31, 2000"; and

f. In paragraph (b)(4)(ii), revising the last sentence.

The revisions read as follows:

**§ 141.172 Disinfection profiling and benchmarking.**

(b) \* \* \*  
(4) \* \* \*  
(ii) \* \* \* The (CT<sub>calc</sub>/CT<sub>99,9</sub>) value of each segment and (Σ(CT<sub>calc</sub>/CT<sub>99,9</sub>)) must be calculated using the method in paragraph (b)(4)(i) of this section.

**§ 141.173 [Amended]**

18. In § 141.173, amend the introductory text by revising "December 17, 2001" to read "December 31, 2001".

**§ 141.174 [Amended]**

19. Section 141.174 is amended by revising paragraph (b) to read as follows:

**§ 141.174 Filtration sampling requirements.**

(b) If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back on-

line. A system has a maximum of five working days after failure to repair the equipment or it is in violation.

**§ 141.175 [Amended]**

20. Amend § 141.175 by revising the two occurrences of "December 17, 2001" to read "January 1, 2002" in the introductory text and adding paragraph (c) to read as follows:

**§ 141.175 Reporting and recordkeeping requirements.**

(c) *Additional reporting requirements.*  
(1) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the State as soon as possible, but no later than the end of the next business day.

(2) If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the State under § 141.173(b) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must inform the State as soon as possible, but no later than the end of the next business day.

**PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION**

21. The authority citation for part 142 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

**§ 142.12 [Amended]**

22. In § 142.12, revise paragraph (b)(3)(i), and the last sentence of (d)(2), to read as follows:

**§ 142.12 Revision of State programs.**

(b) \* \* \*  
(3) \* \* \*

(i) Informing public water systems of the new EPA (and upcoming State) requirements and that EPA will be overseeing implementation of the requirements until the State, if eligible for interim primacy, submits a complete and final primacy revision request to EPA, or in all other cases, until EPA approves the State program revision;

(d) \* \* \*

(2) *Final request.* \* \* \* Complete and final State requests for program revisions shall be submitted within two years of the promulgation of the new or revised EPA regulations, as specified in paragraph (b) of this section.

**§ 142.15 [Amended]**

23. In § 142.15, paragraph (c)(5), revise the reference "§ 141.16(b)(3)" to read "§ 142.16(b)(3)".

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 9, 141 and 142**

[FRL-6576-1]

RIN 2040-AD43

**Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and Revisions to State Primacy Requirements To Implement the Safe Drinking Water Act (SDWA) Amendments****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing minor revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectant and Disinfection Byproducts Rule (Stage 1 DBPR) which were published December 16, 1998, and the Revisions to State Primacy Requirements to Implement the SDWA Amendments (Primacy Rule) published April 28, 1998. Today's proposed rule revises the compliance dates for the IESWTR and the Stage 1 DBPR. This change will shift the monitoring periods to coincide with calendar quarters which will facilitate the implementation of these rules. This proposed rule will also extend the use of new analytical methods included in the IESWTR and the Stage 1 DBPR to compliance monitoring for long standing drinking water regulations for total trihalomethanes. This proposed rule also includes several changes to the regulatory language for clarification. In the "Rules and Regulations" section of this **Federal Register**, EPA is also promulgating these changes as a direct final rule because we view this a noncontroversial revision and anticipate no adverse comments. We have explained our reasons in the preamble to the direct final rule. If we receive no adverse comment, we will not take

further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Written comments must be received by May 15, 2000.

**ADDRESSES:** Send written comments to the Comment Clerk, docket number W-99-11, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The record for this proposed rule is established under docket number W-99-11. The record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, US EPA, 401 M Street, SW, Washington DC. For access to docket materials, please call 202-260-3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street SW, East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. No facsimiles (faxes) will be accepted. See **SUPPLEMENTARY INFORMATION** section for further details about comment submission.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC-4606), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260-7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426-4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

**SUPPLEMENTARY INFORMATION:** This document concerns Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (DBPR), and the Primacy Rule. For further information, please see the information provided in the direct final action which is located in the "Rules and Regulations" section of this **Federal Register** publication. At times, EPA included text from current regulations to make the revisions to the tables easier to understand. These revisions are to §§ 141.132(b)(1)(i), 141.134(b)-(d), 141.135(b)(2), and are distinguished in the preamble to the direct final rule. EPA is not soliciting comment on any regulatory text that has not been revised and will not address any such comments.

**Additional Information for Commenters**

Please submit an original and three copies of your comments and enclosures (including references). Comments must be received or postmarked by May 15, 2000.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. Electronic comments must be submitted as a WP5/6/7/8 file or an ASCII File, avoiding the use of special characters and form and encryption. Electronic comments must be identified by the docket number W-99-11.

**List of Subjects in 40 CFR Parts 141 and 142**

Environmental protection, Analytical methods, Drinking water, Intergovernmental relations, Public utilities, Reporting and recordkeeping requirements, Reservoirs, Utilities, Water supply, Watersheds.

Dated: April 4, 2000.

**Carol M. Browner,**  
*Administrator.*

[FR Doc. 00-9090 Filed 4-13-00; 8:45 am]

**BILLING CODE 6560-50-P**



# Federal Register

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**Friday,  
April 14, 2000**

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**Part IV**

## **Department of Education**

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**Office of Educational Research and  
Improvement; Fund for the Improvement  
of Education—Comprehensive School  
Reform Capacity Building Grants; Notice  
Inviting Applications for New Awards for  
Fiscal Year (FY) 2000; Notice**

**DEPARTMENT OF EDUCATION**

[CFDA No. 84.215C]

**Office of Educational Research and Improvement; Fund for the Improvement of Education—Comprehensive School Reform Capacity Building Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000**

*Purpose of Program:* The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to develop the long-term capacity of comprehensive school reform models to better serve schools as described in the Priorities section of this application notice.

*Eligible Applicants:* State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions.

*Applications Available:* April 21, 2000.

*Deadline for Transmittal of Applications:* June 9, 2000.

*Deadline for Intergovernmental Review:* August 8, 2000.

*Estimated Available Funds:* \$15,000,000.

*Estimated Range of Awards:* \$500,000—\$1,000,000.

*Estimated Average Size of Awards:* \$750,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding \$1,000,000 in any budget period.

*Estimated Number of Awards:* 20.

**Note:** The Department is not bound by any estimates in this notice.

*Budget Period:* 12 months.

*Project Period:* Up to 36 months.

*Page Limit:* The application narrative is where you, the applicant, address the selection criteria reviewers will use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 double-spaced pages using the following standards:

- A page is 8.5" x 11", with printing on one side only.
- Double-space all text in the application narrative (no more than three lines in a vertical inch).

We strongly encourage applicants to use a font that is 12-point or larger with one-inch margins.

The page limit does not apply to the cover sheet; the budget section,

including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

If the narrative section is more than the equivalent of the 25 double-spaced page limit, or if to meet the page limit, you use more than one side of the page or you use a larger page, our reviewers will not evaluate the portion of your application that goes beyond the equivalent of the specified page limit.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations in 34 CFR part 299.

**SUPPLEMENTARY INFORMATION:** The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to develop the long-term capacity of comprehensive school reform models to better serve schools as described in the Priorities section of this notice.

The Conference Report for the Department's fiscal year 2000 appropriation directs the Secretary to make awards to providers of comprehensive school reform models. A comprehensive school reform model is one in which all systems within a school—organization, instruction, professional development and management—and all of the school's classrooms are actively engaged in and accountable for the implementation of a common, articulated strategy to improve teaching and learning for all students in the school.

The Secretary believes that the purpose of the Comprehensive School Reform program is to substantially improve student achievement. These programs are intended to stimulate school-wide change covering virtually all aspects of school operations, rather than a piecemeal, fragmented approach to reform. In order to enhance the long-term capacity of models to provide higher quality services to greater numbers of schools, the Secretary believes that the model developers must engage in a process of continuous improvement based on careful analysis of their work.

In shaping these priorities, the Secretary has consulted widely with the field and drawn on the Department's experiences over the past three years

with the Comprehensive School Reform and Demonstration Program (CSRDP). Recent reports on comprehensive school reform indicate that issues surrounding the implementation of models are very important to their success with teachers and students. Such issues as the district's role in supporting schools undertaking comprehensive school reform, the role of school leadership, community support, teacher capacity and availability of time, the relationship of the model to the existing curriculum in the school, the relationship of the model to the State and local standards and performance measures, among others, have a significant impact on the successful implementation of models in multiple sites throughout the nation. Most models have not developed a systematic way of collecting and analyzing information on implementation of their approach in schools. The Secretary believes that developing such systems will greatly enhance the long-term capacity of models to improve their work and have a positive impact on schools.

To determine the capacity and needs of model developer organizations for funding under this competition, the Secretary requires that the applicants provide a thorough description of their evidence of effectiveness, particularly their student outcome data. He also requires that applicants demonstrate that their models are operating successfully in at least 15 schools to qualify as a national model, and that the model developers demonstrate that there is a significant unmet demand from schools and/or school districts for the model.

The Secretary has determined that the following activities are most likely to improve the long-term ability of models to provide high quality services to larger numbers of schools.

The Secretary believes that more attention needs to be given to activities that support the continuous improvement of models as they scale up and reach larger numbers of schools. Most comprehensive school reform models need to develop and implement data collection and feedback systems that track and provide timely feedback on such activities as: (a) the effectiveness of the professional development provided by the model; (b) the usefulness of materials and technical assistance provided by the model; (c) the model's effectiveness in schools with special populations; (d) the on-going support of staff for the model; and, (e) the model's success in achieving high fidelity implementation in multiple sites. The Secretary believes that providers of comprehensive school

reform models will benefit from developing and implementing data collection and feedback systems that track implementation in all schools adopting their approach. Further, these systems should include data to permit analysis of the role of the district in supporting implementation. Through these efforts the providers of comprehensive school reform models will increase their ability to serve more schools well. The Secretary believes that the assistance of a third-party evaluator will strengthen the effectiveness of some or all of the activities of this part of the priority.

There is research that suggests that the most effective way to increase student learning is to improve the curriculum and associated teaching strategies in the core subject areas and align them with state and local content standards and performance measures. The Secretary believes that the impact of some comprehensive school reform models would be improved by strengthening the teaching and learning that is a part of the model's design.

There is evidence that some comprehensive school reform models do not have the capacity to work effectively with the lowest performing schools. Yet, students in these schools are most often most at risk of failure. Therefore, the Secretary believes that some models would improve their capacity by developing materials and processes that specifically address the needs of the lowest performing schools which will allow them to expand their services into more of these schools.

There is evidence that some of the comprehensive school reform models do not address the concerns of special populations as successfully as they could. English language learners or children with disabilities or both often need specialized materials and support. Therefore, the Secretary believes developers should augment their models to better serve special populations of students.

The Secretary understands that developers of national comprehensive school reform models are finding that it is difficult to meet the demands of an increasing number of schools seeking assistance. Therefore, the Secretary asks the applicants to articulate their specific needs for increasing their capacity in order to scale-up their operation, and to describe the activities that will expand their ability to work more effectively with larger numbers of schools.

Finally, the Secretary believes that the projects funded under this program will benefit from collaboration with other projects, both to improve their individual efforts as well as to

contribute to the overall knowledge on comprehensive school reform. Projects will be expected to collaborate with Department of Education staff and expert consultants in the design of a core set of data collection instruments and analytic measures. It is expected that these will be used to provide continuous feedback on the quality of implementation across the designs and provide the public with data about the effectiveness of the designs in improving student achievement. Projects are required to set aside a minimum of ten (10) percent of their budget for this purpose.

### Priorities

#### *Absolute Priority*

The Secretary gives absolute preference to applications that meet the absolute priority in the next paragraph. The Secretary funds under this priority only applications that meet this absolute priority. (34 CFR 75.105(c)(3)).

#### Absolute Priority—Comprehensive School Reform Models

An applicant must propose a set of activities that are designed to improve the quality of the services provided by a comprehensive school reform model and increase the number of schools served by the model. To be considered for funding, the comprehensive school reform model developer must provide evidence of the model's effectiveness in improving student achievement in high-poverty schools, particularly by providing information on the impact on student achievement. The model must also be operating successfully in at least fifteen (15) schools to be considered for funding under this program and demonstrate that there is a demand from schools interested in adopting the model. The applicant must explain the analytic process and the subsequent results of that process that led to their proposed activities for improving the quality and quantity of services to schools.

(a) Each application must propose one or more of the following activities. We will not consider other activities for funding:

(1) Designing and using continuous improvement processes to track and provide timely feedback on the model's services to adopting schools. [Participation of a third-party evaluator strengthens this effort. See Competitive Priority 1.]

(2) Strengthening the curriculum and instruction provided by the model, particularly in reading and mathematics, and aligning it with state

and local content standards and performance measures.

(3) Developing processes and materials to better support the lowest performing and most troubled schools.

(4) Developing processes and materials to enhance the model's ability to serve special population of students (e.g., English language learners and students with disabilities.)

(5) Supporting other activities that the applicant demonstrates will allow them to serve a larger number of schools with high-quality services.

(b) In addition to the above menu of activities, the applicant must participate in the collaborative design and use of a core set of data collection instruments and analytic measures to carry out the formative and outcome evaluation activities. Department of Education staff will facilitate a process of bringing together project staff funded through this effort and expert consultants to collaborate on the design of the formative and outcome evaluation activities. Each project must set aside a minimum of 10 percent of its budget for this purpose.

#### *Competitive Priorities*

The Secretary will give competitive preference, as indicated under each priority, to applications that meet one or both of the following competitive priorities.

#### Competitive Priority 1

Priority will be given to projects that include a comprehensive formative evaluation plan, including a third-party evaluator.

Under 34 CFR 75.105(c)(2)(i) we award an additional five (5) points to an application, depending on how well the application meets the priority.

#### Competitive Priority 2

Priority will be given to projects that serve a school or schools located in rural or isolated areas.

Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets the priority over an application of comparable merit that does not meet the priority.

#### **Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order,

this document is intended to provide early notification of the Department's specific plans and actions for this purpose.

### Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first grant competition under a new program or substantially revised program from this requirement. The Conference Report for the Department's FY 2000 appropriation directs the Secretary to make awards "to providers of comprehensive school models." This will be the first grant competition conducted under the authority of the Fund for Improvement of Education program, 20 U.S.C. 8001, that concerns comprehensive school reform. The Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forego public comment with respect to the priorities.

The priorities will apply only to the FY 2000 grant competition.

*For Applications Contact:* Julie Coplin, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502J, Washington, DC 20202-5645 Telephone: (202) 219-2089; e-mail julie\_coplin@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

*For Further Information Contact:* Cheryl Kane, U.S. Department of Education, 555 New Jersey Avenue, NW., room 604B Washington, DC 20202-5530. Telephone: (202) 208-2991; e-mail: cheryl\_kane@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

### Alternative Formats

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications Contact*.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the person listed under *For Applications Contact*. However, the Department is not able to reproduce in an alternative

format the standard forms included in the application package.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>  
<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

**Program Authority:** 20 U.S.C. 8001.

Dated: April 10, 2000.

**C. Kent McGuire,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 00-9355 Filed 4-13-00; 8:45 am]

**BILLING CODE 4000-01-U**



# Federal Register

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**Friday,  
April 14, 2000**

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**Part V**

## **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 39**

**Airworthiness Directives; McDonnell  
Douglas Model MD-11; AD 2000-07-14, et  
al.; Final Rules**

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

[Docket No. 99–NM–263–AD; Amendment 39–11668; AD 2000–07–14]

RIN 2120–AA64

**Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a one-time detailed visual inspection of a certain passenger seat wire assembly to detect chafed or damaged wires; repair, if necessary; and installation of protective sleeving. This amendment is prompted by a report of arcing emanating from a certain passenger seat wire assembly. The actions specified by this AD are intended to prevent chafing of the passenger seat wire assembly against a bracket at the lower sidewall panel due to insufficient clearance between the bracket and seat wire assembly, which could result in arcing damage to the passenger seat wire assembly and consequent smoke and fire in the main cabin.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane

Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4781). That action proposed to require a one-time detailed visual inspection of a certain passenger seat wire assembly to detect chafed or damaged wires; repair, if necessary; and installation of protective sleeving.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

**Conclusion**

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

There are approximately 128 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be \$3,840, or \$120 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required installation of protective sleeving, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be \$3,840, or \$120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2000–07–14 McDonnell Douglas:**

Amendment 39–11668. Docket 99–NM–263–AD.

*Applicability:* Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A152, dated August 9, 1999; certificated in any category.

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

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

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

To prevent chafing of the passenger seat wire assembly against a bracket at the lower sidewall panel due to insufficient clearance between the bracket and seat wire assembly, which could result in arcing damage to the passenger seat wire assembly and consequent smoke and fire in the main cabin, accomplish the following:

#### Inspection, Installation, and Repair, if Necessary

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the passenger seat wire assembly to detect chafed or damaged wires, and install protective sleeving, in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A152, dated August 9, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

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

#### Alternative Methods of Compliance

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

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

#### Special Flight Permits

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

#### Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A152, dated August 9, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained

from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Riggan,**

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

[FR Doc. 00-8810 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-264-AD; Amendment 39-11669; AD 2000-07-15]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires a one-time detailed visual inspection of the electrical connections to detect corrosion; repair, if necessary; and installation of new circuit breakers and associated wiring. This amendment is prompted by a report that the ratings of certain circuit breakers of a certain video entertainment system exceed the ratings of their associated electrical connector contacts. The actions specified by this AD are intended to prevent a disparity between the ratings of certain circuit breakers and their associated electrical connector contacts, which could damage the electrical connector contacts and cause possible arcing and heat damage to the electrical connector.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4782). That action proposed to require a one-time detailed visual inspection of the electrical connections to detect corrosion; repair, if necessary; and installation of new circuit breakers and associated wiring.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

#### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### Cost Impact

There are approximately 12 airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD.

It will take approximately 30 work hours per airplane to accomplish the required actions, at an average labor rate of \$60 per work hour. The manufacturer

has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this AD. Based on this information the cost impact of the AD on U.S. operators is estimated to be \$21,600, or \$1,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

#### 2000-07-15 McDonnell Douglas:

Amendment 39-11669. Docket 99-NM-264-AD.

**Applicability:** Model MD-11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11-23-082, dated August 17, 1999; certificated in any category.

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

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

To prevent a disparity between the ratings of certain circuit breakers and their associated electrical connector contacts, which could damage the electrical connector contacts and possible arcing and heat damage to the electrical connector, accomplish the following:

#### Inspection, Installation, and Repair, If Necessary

(a) Within 1 year after the effective date of this AD, perform a detailed visual inspection of certain electrical connections to detect corrosion, and install new circuit breakers and associated electrical wiring (including modification of a certain nameplate), in accordance with McDonnell Douglas Service Bulletin MD11-23-082, dated August 17, 1999. If any corrosion is detected, prior to further flight, repair in accordance with the service bulletin.

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

#### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

#### Special Flight Permits

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

#### Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD11-23-082, dated August 17, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Rigin,**

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

[FR Doc. 00-8811 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-265-AD; Amendment 39-11670; AD 2000-07-16]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model MD-11 and MD-11F Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD),

applicable to certain McDonnell Douglas Model MD-11 and MD-11F series airplanes, that currently requires modification of the external power feeder cable clamping installation. This amendment also requires a detailed visual inspection of the external power feeder cables to detect chafed or damaged wires; and repair, if necessary. This amendment is prompted by reports of damage to the external power feeder cables located under the forward cargo compartment floor, which was caused by excessive cable length and/or maintenance personnel stepping on the cables. The actions specified by this AD are intended to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location.

**DATES:** Effective May 19, 2000.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11-24A078, Revision 01, dated June 16, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of May 19, 2000.

The incorporation by reference of McDonnell Douglas Service Bulletin 24-78, dated May 10, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 15, 1994 (59 FR 27972, May 31, 1994).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39)

by superseding AD 94-11-06, amendment 39-8922 (59 FR 27972, May 31, 1994), which is applicable to certain McDonnell Douglas Model MD-11 and MD-11F series airplanes, was published in the **Federal Register** on February 1, 2000 (65 FR 4784). The action proposed to continue to require modification of the external power feeder cable clamping installation. The action also proposed to require a detailed visual inspection of the external power feeder cables to detect chafed or damaged wires; and repair, if necessary.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

#### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD.

The modification of the external power feeder cable clamping installation that is currently required by AD 94-11-06, and retained in this AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts cost approximately \$395 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$26,450, or \$575 per airplane.

The new actions that are required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be \$2,760, or \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or new requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between

the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8922 (59 FR 27972, May 31, 1994), and by adding a new airworthiness directive (AD), amendment 39-11670, to read as follows:

#### 2000-07-16 McDonnell Douglas:

Amendment 39-11670. Docket 99-NM-265-AD. Supersedes AD 94-11-06, Amendment 39-8922.

*Applicability:* Model MD-11 and MD-11F series airplanes, as listed in McDonnell Douglas Service Bulletin 24-78, dated May 10, 1994; certificated in any category.

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

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

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

To prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location, accomplish the following:

#### **Restatement of Requirements of AD 94-11-06, Amendment 39-8922 Modification**

(a) Within 90 days after June 15, 1994 (the effective date of AD 94-11-06, amendment 39-8922), modify the external power feeder cable clamping installation in accordance with McDonnell Douglas Service Bulletin 24-78, dated May 10, 1994, or McDonnell Douglas Alert Service Bulletin MD11-24A078, Revision 01, dated June 16, 1999.

#### **New Requirements of this AD**

##### *Inspection*

(b) Within 1 year after the effective date of this AD, perform a detailed visual inspection of the external power cables between stations Y=635.000 and Y=655.000 to detect chafed or damaged wires, in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A078, Revision 01, dated June 16, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

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

##### *Alternative Methods of Compliance*

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

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

##### *Special Flight Permits*

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

#### **Incorporation by Reference**

(e) The actions shall be done in accordance with McDonnell Douglas Service Bulletin 24-78, dated May 10, 1994, and McDonnell Douglas Alert Service Bulletin MD11-24A078, Revision 01, dated June 16, 1999.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11-24A078, Revision 01, dated June 16, 1999 is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Service Bulletin 24-78, dated May 10, 1994 was approved previously by the Director of the Federal Register as of June 15, 1994 (59 FR 27972, May 31, 1994).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Riggin,**

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

[FR Doc. 00-8812 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 99-NM-266-AD; Amendment 39-11671; AD 2000-07-17]

**RIN 2120-AA64**

#### **Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires a general visual inspection to verify that the circuit breaker panel fully opens, follow-on inspections, and corrective actions, if necessary. This amendment is prompted by an incident of an operator not being able to fully open the observer's upper main circuit

breaker panel due to a certain cable being too short. The actions specified by this AD are intended to ensure that the upper main circuit breaker panel opens fully. If the panel does not open fully, maintenance activities may be hindered and cause damage to the circuit breaker panel and wiring, which could result in electrical arcing and consequent smoke and fire in the flight compartment.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4786). That action proposed to require a general visual inspection to verify that the circuit breaker panel fully opens, follow-on inspections, and corrective actions, if necessary.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

## Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

There are approximately 161 airplanes of the affected design in the worldwide fleet. The FAA estimates that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$3,960, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

#### 2000-07-17 McDonnell Douglas:

Amendment 39-11671. Docket 99-NM-266-AD.

*Applicability:* Model MD-11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A130, Revision 01, dated September 20, 1999; certificated in any category.

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

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

To ensure that the upper main circuit breaker panel opens fully, accomplish the following:

#### Inspection and a Follow-on Inspection

(a) Within 6 months after the effective date of this AD, perform a general visual inspection to verify that the circuit breaker panel fully opens in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A130, Revision 01, dated September 20, 1999.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the circuit breaker panel fully opens, prior to further flight, perform a detailed visual inspection of the wires between circuit breakers B1-213 and B1-300 to terminal strip S3-602 to detect chafing damage, in accordance with the service bulletin.

(2) If the circuit breaker panel does not fully open, prior to further flight, perform a detailed visual inspection of the route path from circuit breakers B1-213 and B1-300 to terminal strip S3-602 to detect chafing damage and to determine if the wire can be

adjusted or if the wire must be replaced, in accordance with the service bulletin.

**Note 3:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

#### Corrective Actions

(b) If any wire is found to need adjusting during the inspection required by paragraph (a)(2) of this AD, prior to further flight, adjust the wire in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A130, Revision 01, dated September 20, 1999.

(c) If any wire is found to need replacing during the inspection required by paragraph (a)(2) of this AD, prior to further flight, replace the wire with a new wire in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A130, Revision 01, dated September 20, 1999.

(d) If any chafing damage is found during the inspection required by paragraph (a)(1) or (a)(2) of this AD, prior to further flight, repair in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A130, Revision 01, dated September 20, 1999.

#### Alternative Methods of Compliance

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

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

#### Special Flight Permits

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

#### Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A130, Revision 01, dated September 20, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue,

SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Riggin,**

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

[FR Doc. 00-8813 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-267-AD; Amendment 39-11672; AD 2000-07-18]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model MD-11 and MD-11F Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 and MD-11F series airplanes, that requires a one-time detailed visual inspection of the generator power feeder wires to detect chafed or damage wires; repair, if necessary; and a modification of the generator power feeder wire installation. This amendment is prompted by reports of generator power feeder wire chafing on the closeout rib of the wing leading edge at a certain station due to insufficient clearance between the generator power feeder wires and the closeout rib. The actions specified by this AD are intended to prevent chafed and burnt generator power feeder wires, which could result in arcing damage to a certain closeout rib of the wing leading edge and fire damage to the wing structure, and consequent reduced structural integrity of the wing.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft

Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

#### **SUPPLEMENTARY INFORMATION:**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 and MD-11F series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4788). That action proposed to require a one-time detailed visual inspection of the generator power feeder wires to detect chafed or damage wires; repair, if necessary; and a modification of the generator power feeder wire installation.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

#### **Conclusion**

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### **Cost Impact**

There are approximately 189 airplanes of the affected design in the worldwide fleet. The FAA estimates that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators

is estimated to be \$3,960, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### **Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

#### **Adoption of the Amendment**

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

#### **PART 39—AIRWORTHINESS DIRECTIVES**

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

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

#### **§ 39.13 [Amended]**

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

#### **2000-07-18 McDonnell Douglas:**

Amendment 39-11672. Docket 99-NM-267-AD.

*Applicability:* Model MD-11 and MD-11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-

24A172, dated September 8, 1999; certificated in any category.

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

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

To prevent chafed and burnt generator power feeder wires, which could result in arcing damage to a certain closeout rib of the wing leading edge and fire damage to the wing structure, and consequent reduced structural integrity of the wing, accomplish the following:

#### **Inspection; Repair, If Necessary; and Modification**

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the generator power feeder wires to detect chafed or damaged wires, and modify the generator power feeder wire installation in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A172, dated September 8, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

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

#### **Alternative Methods of Compliance**

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

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

#### **Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### **Incorporation by Reference**

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A172, dated September 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 00-8814 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. 99-NM-268-AD; Amendment 39-11673; AD 2000-07-19]**

**RIN 2120-AA64**

#### **Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires a detailed visual inspection of the external power feeder cables in the forward cargo compartment between certain stations to detect chafing or damage; repair, if necessary; and installation of spiral wrap. This amendment is prompted by reports of failure of the external power feeder cable due to being chafed during maintenance. The actions specified by this AD are intended to prevent chafing and damage to external ground power feeder cables, which could result in

electrical arcing and consequent structural damage and smoke and fire in the forward cargo compartment.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4790). That action proposed to require a detailed visual inspection of the external power feeder cables in the forward cargo compartment between certain stations to detect chafing or damage; repair, if necessary; and installation of spiral wrap.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

#### **Explanation of Revised Alert Service Bulletin**

Since issuance of the NPRM, the FAA has reviewed and approved Revision 02 of McDonnell Douglas Alert Service Bulletin MD11-24A008, dated March

27, 2000. The inspection and corrective action procedures in Revision 02 are identical that those specified in Revision 01 of the alert service bulletin, which was referenced in the proposed AD as the appropriate source of service information. Revision 02 of the alert service bulletin reverses the order of the groups of affected airplanes and removes one airplane from the effectivity listing.

As a result of the revised alert service bulletin, the FAA has revised the final rule to reference Revision 02 of the alert service bulletin as the appropriate source of service information for accomplishing the actions required by this AD and for determining the applicability of the AD. The FAA also has revised the final rule by including a new note that gives operators credit for accomplishing the actions required by this AD in accordance with Revision 01 of the alert service. In addition, the FAA has revised the Cost Impact section of the AD to reflect the appropriate cost information for the revised airplane groups.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

There are approximately 38 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes (11 airplanes identified as Group 1 and 3 airplanes identified as Group 2) of U.S. registry will be affected by this AD.

For Group 2 airplanes, the FAA estimates that it will take approximately 1 work hour per airplane to accomplish the required inspection, and approximately 2 work hours per airplane to accomplish the required installation of spiral wrap, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$140 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Group 2 airplanes is estimated to be \$960, or \$320 per airplane.

For Group 1 airplanes, the FAA estimates that it will take approximately 2 work hours per airplane to accomplish the required inspection, and approximately 3 work hours per airplane to accomplish the required

installation of spiral wrap. Required parts will cost approximately \$140 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Group 1 airplanes is estimated to be \$4,840, or \$440 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

### 2000-07-19 McDonnell Douglas:

Amendment 39-11673. Docket 99-NM-268-AD.

**Applicability:** Model MD-11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A008, Revision 02, dated March 27, 2000; certificated in any category.

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

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

To prevent chafing and damage to external ground power feeder cables, which could result in electrical arcing and consequent structural damage and smoke and fire in the forward cargo compartment, accomplish the following:

### Inspection and Modification

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection of the external ground power feeder cables in the forward cargo compartment between stations Y=879.000 and Y=1019.000 left of centerline to detect chafing or damage, in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A008, Revision 02, March 27, 2000.

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

(1) If any chafing or damage is detected, prior to further flight, repair and install spiral wrap, in accordance with the service bulletin.

(2) If no chafing or damage is detected, prior to further flight, install spiral wrap in accordance with the service bulletin.

**Note 3:** Inspections, repairs, and installations accomplished prior the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A008, Revision 01, dated December 2, 1999; are considered acceptable for compliance with the requirements of this AD.

### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

#### Special Flight Permits

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

#### Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A008, Revision 02, dated March 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Riggan,**

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

[FR Doc. 00-8815 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-269-AD; Amendment 39-11674; AD 2000-07-20]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD),

applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires electrical resistance measurements of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding and of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding; and corrective actions, if necessary. This amendment is prompted by an incident of charred insulation blankets in the forward cargo compartment in the area of the external ground power receptacle and the galley external power circuit breakers, and another incident of a No. 2 "generator off" alert while the generator was still on line. The actions specified by this AD are intended to prevent arcing and overheating of terminals and consequent smoke and fire in the forward cargo compartment due to improper bonding of ground studs in the forward cargo compartment and in the electrical power center and due to improper installation of circuit breaker terminations.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4792). That action proposed to require electrical resistance measurements of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding and of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding; and corrective actions, if necessary.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

#### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### Cost Impact

There are approximately 31 airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD. It will take approximately 2 work hours per airplane to accomplish the required measurements, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the measurements required by this AD on U.S. operators is estimated to be \$1,080, or \$120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

“significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

##### 2000-07-20 McDonnell Douglas:

Amendment 39-11674. Docket 99-NM-269-AD.

**Applicability:** Model MD-11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A040, Revision 01, dated October 11, 1999; certificated in any category.

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

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

To prevent arcing and overheating of terminals and consequent smoke and fire in the forward cargo compartment due to improper bonding of ground studs in the forward cargo compartment and in the electrical power center (EPC) and due to

improper installation of circuit breaker terminations, accomplish the following:

#### Resistance Check and Corrective Actions

(a) Within 12 months after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A040, Revision 01, dated October 11, 1999.

(1) Perform an electrical resistance measurement of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding, in accordance with the service bulletin.

(i) If all ground studs are electrically bonded properly, prior to further flight, tighten applicable fasteners, if necessary, in accordance with the service bulletin.

(ii) If any ground stud is not electrically bonded properly, prior to further flight, electrically bond the ground stud in accordance with the service bulletin.

(2) Perform an electrical resistance measurement of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding, in accordance with the service bulletin.

(i) If all ground studs are electrically bonded properly, prior to further flight, tighten applicable attaching parts in accordance with the service bulletin.

(ii) If any circuit breaker termination is found loose, tighten in accordance with the service bulletin.

(iii) If any ground stud is not electrically bonded properly, prior to further flight, electrically bond the ground stud in accordance with the service bulletin.

#### Alternative Methods of Compliance

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

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

#### Special Flight Permits

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

#### Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A040, Revision 01, dated October 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood

Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Riggan,**

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

[FR Doc. 00-8816 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-270-AD; Amendment 39-11675; AD 2000-07-21]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that requires a general visual inspection of wiring behind the control panel of the auxiliary power unit (APU) located in the cockpit to detect chafing; repair if necessary; and modification of the wiring. This amendment is prompted by an incident of chafing of wire bundles of the control module of the APU. The actions specified by this AD are intended to prevent such chafing and resultant arcing due to insufficient clearance between the wire bundles and the airplane structure, which could result in smoke and fire in the flight deck.

**DATES:** Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855

Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4793). That action proposed to require a general visual inspection of wiring behind the control panel of the auxiliary power unit (APU) located in the cockpit to detect chafing; repair if necessary; and modification of the wiring.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 164 airplanes of the affected design in the worldwide fleet. The FAA estimates that 61 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be \$3,660, or \$60 per airplane.

The FAA also estimates that it will take approximately 1 work hour per airplane to accomplish the required modification, at an average labor rate of \$60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be \$3,660, or \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2000-07-21 McDonnell Douglas:** Amendment 39-11675. Docket 99-NM-270-AD.

*Applicability:* Model MD-11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A116, Revision 01, dated October 11, 1999; except for those airplanes on which the modification specified in McDonnell Douglas Service Bulletin MD11-24-116, dated May 14, 1997, has been accomplished; certificated in any category.

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

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

To prevent wire chafing of the control panel of the auxiliary power unit (APU) and resultant arcing due to insufficient clearance between the wire bundles and the airplane structure, which could result in smoke and fire in the flight deck, accomplish the following:

### Inspection

(a) Within 12 months after the effective date of this AD, perform a general visual inspection of wiring behind the control panel of the APU to detect chafing, in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A116, Revision 01, dated October 11, 1999.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no chafing is found, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(2) If any chafing is found, prior to further flight, repair in accordance with the service bulletin and accomplish the requirements of paragraph (b) of this AD.

### Modification

(b) Modify the wiring behind the APU control panel (i.e., install sleeving and fiber

tying tape over wires) in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A116, Revision 01, dated October 11, 1999.

#### Alternative Methods of Compliance

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

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

#### Special Flight Permits

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

#### Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A116, Revision 01, dated October 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business

Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

**Donald L. Riffin,**

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

[FR Doc. 00-8817 Filed 4-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

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#### **NORTHEAST DAIRY COMPACT COMMISSION**

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Supply management program; hearings; comments due by 4-19-00; published 3-8-00

#### **PERSONNEL MANAGEMENT OFFICE**

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Veterans Employment Opportunities Act; staffing provisions; comments due by 4-17-00; published 3-17-00

#### **POSTAL SERVICE**

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#### **SECURITIES AND EXCHANGE COMMISSION**

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Supplementary financial information; comments due by 4-17-00; published 1-31-00

#### **TRANSPORTATION DEPARTMENT**

**Coast Guard**  
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Regattas and marine parades:  
Miami Super Boat Grand Prix; comments due by 4-17-00; published 3-2-00

#### **TRANSPORTATION DEPARTMENT**

##### **Federal Aviation Administration**

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Bell; comments due by 4-17-00; published 2-17-00

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Class E airspace; comments due by 4-17-00; published 3-22-00

#### **TREASURY DEPARTMENT Alcohol, Tobacco and Firearms Bureau**

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Tobacco products—  
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#### **TREASURY DEPARTMENT Comptroller of the Currency**

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#### **TREASURY DEPARTMENT Internal Revenue Service**

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Hyperinflationary currency; definition; comments due by 4-20-00; published 1-13-00

#### **VETERANS AFFAIRS DEPARTMENT**

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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 "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal**

**Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

#### **H.R. 5/P.L. 106-182**

Senior Citizens' Freedom to Work Act of 2000 (Apr. 7, 2000; 114 Stat. 198)

#### **Last List April 10, 2000**

#### **Public Laws Electronic Notification Service (PENS)**

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