



# Federal Register

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- WHAT:** Free public briefings (approximately 3 hours) to present:
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- 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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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. 98–029–2]

#### Change in Disease Status of the Republic of South Africa Because of Foot-and-Mouth Disease and Rinderpest

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

**ACTION:** Final rule.

**SUMMARY:** We are declaring the Republic of South Africa, except the foot-and-mouth disease controlled area, which includes Kruger National Park, free of foot-and-mouth disease. We are also declaring all of the Republic of South Africa free of rinderpest. We are taking these actions because there have been no outbreaks of foot-and-mouth disease in the Republic of South Africa, except in the foot-and-mouth disease controlled area, since 1957, and there have been no outbreaks of rinderpest in the Republic of South Africa since 1903. These actions will relieve certain restrictions due to foot-and-mouth disease and rinderpest on the importation into the United States of certain live animals and animal products from all regions of the Republic of South Africa, except the foot-and-mouth disease controlled area. However, because we do not consider the Republic of South Africa to be free of hog cholera, African swine fever, and swine vesicular disease, the importation of live swine, and meat and other products from swine, into the United States from the Republic of South Africa will continue to be subject to certain restrictions.

**EFFECTIVE DATE:** May 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–4356.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to help prevent the introduction of various diseases, including foot-and-mouth disease (FMD) and rinderpest. FMD and rinderpest are highly contagious and destructive diseases of ruminants and swine.

Section 94.1(a) of the regulations provides that rinderpest or FMD exists in all regions of the world except those listed in § 94.1(a)(2) as free of both of those diseases and those listed in § 94.1(a)(3) as free of rinderpest. The regulations in § 94.1(b) prohibit, with certain exceptions, the importation into the United States of any ruminant or swine, or any fresh (chilled or frozen) meat of any ruminant or swine, that originates from a region where rinderpest or FMD exists, or that has entered a port in or otherwise transited a region where rinderpest or FMD exists. Also, the regulations in § 94.2 restrict the importation of fresh (chilled or frozen) products, other than meat, and milk and milk products of ruminants or swine that originate in or transit a region where rinderpest or FMD exists. Additionally, the importation of organs, glands, extracts, and secretions of ruminants or swine originating in a region where rinderpest or FMD exists is restricted under the regulations in § 94.3, and the importation of cured or cooked meat from a region where rinderpest or FMD exists is restricted under the regulations in § 94.4. Finally, the regulations in 9 CFR part 98 restrict the importation of ruminant and swine embryos and animal semen from a region where rinderpest or FMD exists.

The Government of the Republic of South Africa has requested that the U.S. Department of Agriculture (USDA) recognize the Republic of South Africa as free of rinderpest. It also has requested that USDA recognize the

Republic of South Africa, except the FMD-controlled area, which includes Kruger National Park, as free of FMD.

On February 17, 1999, we published in the **Federal Register** (64 FR 7816–7822, Docket No. 98–029–1) a proposal to amend the regulations by declaring the Republic of South Africa, except the FMD-controlled area (which extends from the Republic of South Africa's border with Mozambique approximately 30 to 90 kilometers into the Republic of South Africa to include Kruger National Park and surveillance and control zones around the park, and elsewhere extends, from east to west, approximately 10 to 20 kilometers into the Republic of South Africa along its borders with Mozambique, Swaziland, Zimbabwe, Botswana, and the southeast part of the border with Namibia), free of FMD. We also proposed to declare all of the Republic of South Africa free of rinderpest. In addition, we proposed to add the proposed FMD-free area of the Republic of South Africa to the list of regions in § 94.11(a) that are declared free of rinderpest and FMD but are still subject to some restrictions on the importation of their meat and other animal products into the United States because they share land borders with or trade freely with regions that we do not recognize as being free of these diseases. We did not propose any changes to the restrictions we have on importations of swine and swine products from the Republic of South Africa because of hog cholera, African swine fever, and swine vesicular disease because we do not recognize the Republic of South Africa as being free of these diseases.

We solicited comments concerning our proposal for 60 days ending April 19, 1999. We received 17 comments by that date. They were from a State agricultural experiment station, a veterinary association, the Republic of South Africa, and private citizens. Three of the commenters supported the proposal as written. Twelve commenters supported the proposed rule, except with respect to the importation of animal semen and embryos from the Republic of South Africa. One commenter expressed concerns regarding various aspects of the docket, including how we proposed to regulate animal semen and embryos. One commenter expressed concerns about the effects that additional imports might have on the domestic Boer goat

industry. All of the issues raised by the commenters are discussed below.

### Importation of Semen and Embryos

In the proposal, we stated that the importation of ruminant and swine embryos and semen from the Republic of South Africa would be restricted as provided in subparts B and C of 9 CFR part 98 due to the presence of other ruminant and swine diseases (meaning diseases other than rinderpest and FMD). Thirteen commenters stated that the proposed restrictions on the importation of animal embryos and semen from the Republic of South Africa into the United States were unnecessarily stringent. We agree. Our citation to subpart B of 9 CFR part 98 was incorrect; we should have cited subpart A. Subpart B pertains to the importation of ruminant and swine embryos from regions where rinderpest or FMD exists. Under this final rule, ruminant and swine embryos from the Republic of South Africa, except the FMD-controlled area, may be imported in accordance with subpart A of 9 CFR part 98, which, among other things, sets forth the requirements for the importation of ruminant and swine embryos from regions free of rinderpest and FMD. The requirements in subpart A are less stringent than those in subpart B. In addition, the importation of ruminant and swine semen into the United States from the Republic of South Africa, except the FMD-controlled area, would be allowed as provided in subpart C of 9 CFR part 98 for animal semen from regions where rinderpest and FMD do not exist. Both subparts A and C include provisions for ensuring that other diseases that may be present in the Republic of South Africa are not introduced into the United States.

### Swine Diseases

We stated in our proposed rule that the importation of swine and swine products from the Republic of South Africa would continue to be restricted because of hog cholera, swine vesicular disease (SVD), and African swine fever (ASF). One commenter objected. He stated that the Republic of South Africa has been free of hog cholera since 1918, and that SVD has never been diagnosed in the Republic of South Africa. In addition, the commenter stated that the Republic of South Africa has an ASF-controlled area and that the last outbreak of ASF in the free area, in February 1996, was due to an illegal movement of pigs from the ASF-controlled area. The commenter maintained that information regarding hog cholera and SVD in the Republic of

South Africa is supplied by the Office International des Epizooties (OIE), which is the international standard-setting body for animal health. The commenter stated that the World Trade Organization Agreement on Sanitary and Phytosanitary Measures (WTO-SPS Agreement) requires us to provide a scientific basis for deviations from international standards.

The WTO-SPS Agreement requires that measures be scientifically sound, guided by international standards, adapted to regional conditions, transparent, risk-assessment based, taken in recognition that equal levels of risk mitigation may be achieved by applying differing sanitary measures, and be applied in a manner that is not arbitrarily or unjustifiably discriminating. Nations acting in accordance with the principles of the WTO-SPS Agreement may impose sanitary or phytosanitary requirements necessary to protect human, animal, or plant life or health.

The regulations in §§ 94.8, 94.9(a), and 94.12(a) describe regions in which ASF, hog cholera, and SVD, respectively, are considered to exist, including the Republic of South Africa. If the Republic of South Africa wishes to export live swine or meat and other products of swine to the United States under less restrictive conditions than currently apply and submits the request to us in accordance with 9 CFR part 92, we will evaluate the request in accordance with that part.

One commenter stated that ASF is a swine disease and that ruminant meat, embryos, and semen cannot be restricted based on the presence of ASF in certain areas of the Republic of South Africa.

We are not restricting the importation of ruminant meat, embryos, or semen because of the presence of ASF in the Republic of South Africa. Under this final rule, the importation of ruminant meat will continue to be restricted under § 94.11 because of the potential for it to be commingled with meat imported into the Republic of South Africa from regions where rinderpest or FMD exists. (See additional discussion below under "Trade Practices.")

Ruminant embryos and semen may be imported in accordance with 9 CFR part 98, subparts A and C, respectively, and import conditions will not be affected by the presence or absence of ASF because that disease does not affect ruminants.

### Trade Practices

We proposed to add the Republic of South Africa to the list of regions in § 94.11 that are free of rinderpest and

FMD but are still subject to restrictions with respect to imports of meat and other animal products into the United States because of their trade practices with regions of higher risk for rinderpest and FMD.

One commenter objected to our listing the Republic of South Africa in § 94.11. The commenter stated that the Republic of South Africa was unaware of any international standard that allows a member country to restrict trade in products from free regions because of importation policies of those free regions. He stated that the Republic of South Africa's importation policies have been effective for over 40 years in preventing the introduction of FMD and rinderpest into the Republic of South Africa and that we should recognize those measures as equivalent in accordance with the WTO-SPS Agreement. The commenter further stated that the Republic of South Africa should be able to recognize other FMD- and rinderpest-free regions based on its own evaluation and should not have to discriminate against animals imported from regions recognized by the Republic of South Africa, but not by the United States, as free of FMD and rinderpest. The commenter also stated that, while the Republic of South Africa was willing to certify, as required by § 94.11, that slaughtered animals are from areas free of FMD and rinderpest, the Republic of South Africa objects to certifying that slaughtered animals were born and raised in the FMD-free area of the Republic of South Africa. The commenter specifically mentioned Namibia and Botswana as having FMD-free zones recognized by the OIE and said that the United States should recognize them as well. The commenter requested a copy of our risk assessment supporting our restrictions on ruminant and swine meat from the Republic of South Africa. The commenter also objected to the requirement in § 94.11 that certifications under that section must be made by a full-time salaried veterinary official of the national government.

The WTO-SPS Agreement obliges member countries to be transparent in developing SPS measures. The measures developed should be based on sound scientific principles, risk assessments, guided by relevant international standards, and applied without arbitrarily or unjustifiably discriminating. The principles of equivalence and adaptation to regional conditions should be encompassed within the measures. APHIS published its policy for applying these concepts to the importation of animals and animal products in the **Federal Register** on

October 28, 1997 (see 62 FR 56027–56033, Docket No. 94–106–8.) As noted in that document, regions classified as “free” of a certain disease can present different levels of risk. Currently, § 94.11 of the regulations addresses this risk, with respect to rinderpest and FMD, by imposing restrictions on the importation of meat from regions that are “free” of these diseases, but that present a higher disease risk due to importation practices of these regions or their geographical proximity to regions with a higher disease risk. Paragraph (a) of § 94.11 lists regions that are declared free of rinderpest and FMD but are subject to restrictions on the importation of their meat and animal products into the United States because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; or (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States. As a result of these practices, the meat or other products produced in the free region may be commingled with the fresh (chilled or frozen) meat of animals from a region where rinderpest or FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States if the free region is allowed to export meat to the United States without restriction.

Section 94.11 requires, among other things, that the meat or other products imported into the United States from a region listed in § 94.11(a) be accompanied by a certificate that states, in part, that the meat or other animal product covered by the certificate was derived from animals born and raised in a region listed in § 94.2(a) of the regulations as free of rinderpest and FMD and has never been in any region in which rinderpest or FMD existed. We believe this certification is necessary to ensure that the meat imported into the United States from the free region is from an animal that is free of the disease and that the meat has not been commingled with meat from a region where rinderpest or FMD exists.

Section 94.11 requires this certification to be made by a full-time salaried veterinary official of the agency in the national government that is responsible for the health of the animals within that region. Because of the seriousness of the diseases § 94.11 addresses, we believe it is appropriate

for a full-time salaried veterinary official to provide the required certification.

The Republic of South Africa recognizes FMD-free areas of Botswana and Namibia and imports ruminants and swine and ruminant and swine meat and other products from those regions under conditions that are less restrictive than would be acceptable for importation into the United States. The United States does not recognize Botswana or Namibia as being free of rinderpest or FMD, nor do we recognize FMD-free regions within either country. Further, neither country has requested that we evaluate its disease status with respect to rinderpest or FMD. As explained in our 1997 policy statement, we will continue to apply existing import requirements to countries listed in our regulations as free or not free of certain diseases until we amend our regulations based on a request to reevaluate a country's disease status or to regionalize a country for a certain disease. The request must come from the country wishing a change in status. The request must be made by a representative of the national government of that country who has the authority to request such a change, and the request must be accompanied by specific information about the region to be considered, in accordance with 9 CFR part 92. We will consider a region's listing by OIE in our assessment, but this will not be our sole criterion.

Our policy does not interfere with the Republic of South Africa's right to trade with any region or to independently assess the disease status of a particular region based on its own criteria or regulations, just as the United States does.

#### Regulatory Flexibility Analysis

One commenter stated that there is interest in the importation of cattle and small stock embryos from the Republic of South Africa into the United States. The commenter further stated that the volume of trade in embryos between the Republic of South Africa and the United States may increase based on our acceptance of the Republic of South Africa's disease status and certification procedure.

The commenter did not identify the animals that he considered small stock, but we assume that small stock includes goats and sheep. We anticipate that there will be some imports of small stock semen and embryos from the Republic of South Africa to improve the genetics of some herds in the United States; however, we expect the amount to be relatively low because the population of goats and sheep within the United States is relatively small.

#### Other

One commenter who breeds Boer goats requested the establishment of another port of entry, in Houston, TX, for importation. However, the commenter did not specify whether the port of entry should be for the importation of goats or goat embryos and semen. One commenter recommended requiring importers and owners of flocks that receive Boer goats and Boer goat germ plasm from the Republic of South Africa to meet certain requirements regarding domestic animal health, food safety, and livestock trade. This commenter also suggested restricting the rate of importation of Boer goats and Boer goat germ plasm from the Republic of South Africa into the United States to protect U.S. meat goat farmers and the U.S. Boer goat market.

These comments are outside the scope of this rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes certain restrictions on the importation into the United States of certain animals and animal products from the Republic of South Africa, except the FMD-controlled area. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

#### Executive Order 12866 and Regulatory Flexibility Act

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

This rule recognizes all of the Republic of South Africa as free of rinderpest and the Republic of South Africa, except the FMD-controlled area, as free of FMD. This action will relieve certain restrictions on the importation of animals and animal products into the United States from the Republic of South Africa. However, the importation of swine and pork and pork products will continue to be restricted because we do not consider the Republic of South Africa to be free of hog cholera, African swine fever, or swine vesicular disease.

The following analysis examines the economic effects of this rule on small entities as required by the Regulatory Flexibility Act.

The cattle industry in the Republic of South Africa is small relative to the cattle industry in the United States. In 1997, there were more than 101 million head of cattle in the United States, compared to more than 13 million in the Republic of South Africa. Of the 2 million head of cattle that were imported into the United States in 1996, more than 99 percent were from Canada and Mexico, and most of these were feeder and slaughter animals. Sheep and goat inventories in the United States are relatively small. In 1997, there were more than 7 million sheep and goats in the United States, compared to more than 35 million in the Republic of South Africa. Of the sheep that the United States imports, more than 99 percent are from Canada and Mexico ("World Trade Atlas," June 1997). In 1995, the United States imported 460 goats and sheep from the Republic of South Africa; however, since 1995, the United States has not imported any live goats and sheep from the Republic of South Africa. We do not believe that adoption of this rule will lead to a significant number of live ruminants being imported into the United States from the Republic of South Africa because of the cost of transporting the animals.

We also do not believe that adoption of this rule will result in a significant amount of ruminant meat (beef, veal, mutton, and goat meat) and meat products imported into the United States from the Republic of South Africa. The Republic of South Africa's production of ruminant meat in 1997 was 1,542 million pounds, compared to 26,089 million pounds of ruminant meat produced in the United States. In 1997, the Republic of South Africa imported 196 million pounds of ruminant meat and exported 44 million pounds of ruminant meat. The Republic of South Africa trades primarily with the European Union, the Middle East, Japan, Korea, Australia, New Zealand, and neighboring African countries. The United States obtains more than 85 percent of its imports of ruminant meat and meat products from Australia, Canada, and New Zealand. We anticipate that this rule's effect on domestic supplies of ruminant meat and meat products will be negligible because we believe that the Republic of South Africa is unlikely to redirect a significant portion of its ruminant meat production for export exclusively to the United States, given that restrictions will remain in place for imports into the United States.

The importation of dairy products from the Republic of South Africa into the United States should also be minimally affected by this rule. In 1998, U.S. exports and imports of dairy products were valued at more than \$914 million and \$1,465 million, respectively. In 1998, the United States exported more than \$3.6 million worth of dairy products to the Republic of South Africa and imported more than \$3.4 million worth of dairy products from the Republic of South Africa. We believe that it is highly unlikely that the United States will import a significant amount of dairy products from the Republic of South Africa because the United States is a net exporter of those products to the Republic of South Africa. Therefore, the effect on domestic dairy producers should be minimal.

The importation of ruminant embryos and semen from the Republic of South Africa into the United States should also be minimally affected by this rule. The United States is a net exporter of both bovine semen and cattle embryos. In 1996, the value of U.S. bovine semen and cattle embryo imports was \$7.7 million and \$701,000, respectively, while the value of U.S. exports of bovine semen and cattle embryos was \$63.1 million and \$12.6 million, respectively ("World Trade Atlas," June 1997). Due to the trade balance and the size differences between the cattle industries of the United States and the Republic of South Africa, the amount of bovine semen and cattle embryos imported will likely be minimal and have a minimal effect on small domestic cattle producers.

We believe that there will be a demand for the importation of Boer goat germ plasm from the Republic of South Africa to the United States. However, as previously stated, the goat industry within the United States is relatively small. As a result, we do not believe that the amount of germ plasm imported into the United States will be significant.

The entities most likely to be affected by this rule are those entities engaged in the production of live ruminants and ruminant meat and meat products. The Small Business Administration's (SBA's) definition of a small cattle farm is one whose total sales is less than \$0.5 million annually. In 1997, 99.4 percent of cattle and calf farms in the United States would have been considered small entities.

The SBA's guidelines state that a small producer of products of swine or ruminants (part of Standard Industrial Classification (SIC) 2011 or 2013, meat packing plants) is one employing fewer than 500 workers. In 1997, 95 percent of the 1,393 meat packing establishments

in SIC 2011 were considered small entities. These small establishments accounted for approximately 23.7 percent of the total value of shipments of the industry, or \$54.5 billion. In 1997, 98.1 percent of the 1,297 establishments in SIC 2013 were considered small entities. These producers accounted for 78.3 percent of the total value of shipments of the industry, or \$25 billion.

Although the majority of the domestic entities potentially affected by this rule are small, there should be only a minimal change in the level of imports that may compete with the production of these small entities, and thus there would be a minimal effect on any domestic producer of these products, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of certain live animals and animal products from all regions of the Republic of South Africa, except the FMD-controlled area, will not present a significant risk of introducing or disseminating FMD or rinderpest disease agents into the United States and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA

(7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202)690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

#### **PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

#### **§ 94.1 [Amended]**

2. Section 94.1 is amended as follows:

a. In paragraph (a)(2), by adding the words "Republic of South Africa except the foot-and-mouth disease controlled area (which extends from the Republic of South Africa's border with Mozambique approximately 30 to 90 kilometers into the Republic of South Africa to include Kruger National Park and surveillance and control zones around the park, and elsewhere extends, from east to west, approximately 10 to 20 kilometers into the Republic of South Africa along its borders with Mozambique, Swaziland, Zimbabwe, Botswana, and the southeast part of the border with Namibia)," immediately after "Republic of Korea,".

b. In paragraph (a)(3), by adding the words "and the Republic of South Africa" immediately after "Greece".

c. In paragraph (b)(1), by removing the reference to "part 92" and adding in its place a reference to "part 93".

#### **§ 94.11 [Amended]**

3. In § 94.11, paragraph (a) is amended by adding, in the first sentence, the words "Republic of South Africa except the foot-and-mouth disease controlled area (which extends from the Republic of South Africa's border with Mozambique approximately 30 to 90 kilometers into the Republic of South Africa to include Kruger National Park and surveillance and control zones around the park, and elsewhere extends, from east to west, approximately 10 to 20 kilometers into the Republic of South Africa along its borders with Mozambique, Swaziland, Zimbabwe, Botswana, and the southeast part of the border with Namibia)," immediately after "Republic of Korea,".

Done in Washington, DC, this 11th day of April 2000.

**Bobby R. Acord,**

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

[FR Doc. 00-9491 Filed 4-14-00; 8:45 am]

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#### **NUCLEAR REGULATORY COMMISSION**

#### **10 CFR Part 39**

#### **RIN 3150-AG14**

#### **Energy Compensation Sources for Well Logging and Other Regulatory Clarifications**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations governing licenses and radiation safety requirements for well logging. The final rule modifies NRC regulations dealing with: low activity energy compensation sources; tritium neutron generator target sources; specific abandonment procedures in the event of an immediate threat; changes to requirements for inadvertent intrusion on an abandoned source; the codification of an existing generic exemption; the removal of an obsolete date; and updating regulations to be consistent with the Commission's metrication policy. The amendments to NRC's regulations are necessary to improve, clarify, update, and reflect

current practices in the well logging industry.

**EFFECTIVE DATE:** May 17, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6196, e-mail MFH@nrc.gov.

#### **SUPPLEMENTARY INFORMATION:**

The Nuclear Regulatory Commission is amending its regulations to acknowledge and accommodate the use of well logging technology that was not incorporated when the NRC issued the existing well logging regulations (March 17, 1987; 52 FR 8225). This technology allows licensees to lower a logging tool down a well at the same time that the hole for the well is being drilled instead of requiring drilling to stop, removing drilling pieces, and lowering a logging tool down the well. This technology is commonly referred to as "logging while drilling." This process uses a relatively small radioactive source within the logging tool in addition to the larger radioactive sources currently used in logging a well. The 1987 regulations were based on the use of the larger radioactive sources and include provisions that are unnecessary and potentially burdensome for the additional small sources. These changes will have no significant impact on public health and safety and the environment while reducing potential burdens to licensees. Licensees will no longer need to comply with unnecessary regulatory requirements for these small sources or to request licensing exemptions from the NRC for actions dealing with these small sources. Other changes are also being implemented to improve, clarify, and update NRC's well logging regulations to reduce confusion. These changes may also reduce the need for licensees to request exemptions from unnecessary requirements.

#### **Introduction**

Oil and gas come from accumulations in the pore spaces of reservoir rocks (usually sandstone, limestone, or dolomites) and are removed via a well. Because the amount of oil and gas in these pore spaces is dependent upon the rock's characteristics, the oil and gas industry often needs to determine the characteristics of underground formations to predict the commercial viability of a new or existing well. Licensed radioactive materials are used to obtain information on certain properties of an underground formation, such as type of rock, porosity, hydrocarbon content, and density.

These properties are important in the evaluation of oil and gas reservoirs.

One method to obtain information about oil and gas reservoirs is by using well logging tools. Licensed radioactive materials (sealed radioactive sources with associated radiation detectors) are contained in well logging tools. Americium-241 and cesium-137 are the radioactive materials most frequently used for this purpose. Traditionally, these tools are lowered into a well on a wireline. The depth of the well could range from several hundred feet to greater than 30,000 feet. Information collected by the detectors is sent to the surface through the wireline and plotted on a chart as the logging tool is slowly raised from the bottom of the well. Licensed radioactive materials are also used for similar purposes in coal and mineral exploration.

The licensing and radiation safety requirements for well logging are provided in 10 CFR Part 39. When the existing regulations for well logging were promulgated in 1987, the well logging process required drilling to stop while parts of the drilling pieces were removed before lowering a logging tool down a well. More recent technology, referred to as logging-while-drilling (LWD), allows well logging to be accomplished during drilling. This technology employs an additional low-activity radioactive source within the well logging tool known as an energy compensation source, or ECS. The ECS is used to calibrate the well logging tool while the well is being drilled.

LWD provides real time data during drilling operations and improves the evaluation of geologic formations while reducing drilling costs. The real-time information can aid in decision making because evaluating a formation can be planned as soon as the drill bit reaches a formation.

### Background

Based on the changing technology in the well logging industry, the NRC developed a Rulemaking Plan to consider the need to update 10 CFR Part 39. On May 28, 1997, the NRC provided Agreement States a draft Rulemaking Plan for comment entitled, "Energy Compensation Sources for Well Logging and Clarifications—Changes to 10 CFR Part 39." The draft Rulemaking Plan was contained in SECY-97-111, also dated May 28, 1997. Comments were received from the States of Utah, Illinois, and Washington. These States generally supported the proposal and provided specific information and comments. Where appropriate, these comments were incorporated into the final Rulemaking Plan contained in

SECY-98-105, dated May 12, 1998, and approved by the Commission in a Staff Requirements Memorandum dated June 25, 1998.

In the final Rulemaking Plan, the NRC proposed to modify the existing regulations in 10 CFR Part 39 to account for the use of ECSs. The changes would reduce regulatory burden on NRC and Agreement State licensees with no significant impact to public health and safety. In addition, there are other sections within 10 CFR Part 39 that should be changed to improve, clarify, and update the existing regulations. The final Rulemaking Plan provides the rationale used in the development of this proposed rule. The NRC published the proposed rule in the **Federal Register** on April 19, 1999 (64 FR 19089). The NRC received five comments on the proposed rule. These comments and responses are discussed in the "Comments on the Proposed Rule" section.

### Regulatory Action

The NRC is making seven specific changes to improve, clarify, and update the requirements in 10 CFR Part 39.

1. The principal objective of this rulemaking is amending 10 CFR Part 39 to accommodate the radioactive ECSs that are used in some well logging applications. The ECS is a low activity source, typically less than 1.85 MBq (50 microcuries), compared to the normal 110 GBq to 740 GBq (3 to 20 curies) sources used in well logging. 10 CFR Part 39, originally promulgated in 1987, does not provide any specific provisions for these low activity sources. Many of the requirements in 10 CFR Part 39, when applied to an ECS, are not appropriate or necessary to protect public health and safety and the environment. Therefore, the NRC is changing the existing regulations.

Because the existing regulations do not allow for variations based on the activity of the source, licensees who use an ECS would need to meet all the requirements for larger sources. Examples of requirements which are overly burdensome for licensees using ECSs include those addressing well abandonment (§§ 39.15 and 39.77), leak testing (§ 39.35), design and performance criteria for sealed sources (§ 39.41), and monitoring of sources lodged in a well (§ 39.69). The NRC is requiring that only those sections dealing with leak testing (a revised § 39.35 specifically addresses ECSs), physical inventory (§ 39.37), and records of material use (§ 39.39) will apply to the use of an ECS.

Oil and gas wells use a surface casing to protect fresh water aquifers. However,

if a surface casing is not used, the NRC would retain the well abandonment requirements. Requirements established in other parts of NRC regulations (e.g., 10 CFR Parts 20, 30, 40, and 70) still apply to the possession and use of licensed material and are adequate to protect public health and safety and the environment.

Therefore, the NRC is amending 10 CFR Part 39 to recognize the use of an ECS in well logging and to provide requirements governing its use. These provisions include radioactivity limits on the ECS and leak testing requirements. The most significant change will exclude an ECS from the costly procedures for well abandonment in the event only an ECS is lost within the well. The requirements for well abandonment, in addition to specific reporting and approval requirements, require the source to be immobilized and sealed in place with a cement plug which must be protected from inadvertent intrusion, and the mounting of a permanent plaque at the surface of the well. In the Regulatory Analysis (RA) conducted for this rulemaking, a limited survey of ECS users indicated that about eight ECSs are abandoned per year. Although estimated abandonment costs varied significantly by survey respondent, the estimated savings to the industry to avoid eight abandonments per year is \$5 million.

The NRC is establishing 3.7 MBq (100 microcuries) as the limit for an ECS. Existing ECSs typically use up to 1.85 MBq (50 microcuries) of americium-241 (cesium-137 sources are smaller). One licensee noted that they have calibration sources that use more than 100 microcuries. The 3.7 MBq (100 microcuries) limit will allow licensees flexibility in designing new sources of this kind while maintaining their radioactivity within an environmentally safe level. These ECS sources will not be required to meet the requirements in § 39.41. However, the ECS sources for use in well logging applications will be required to be registered pursuant to 10 CFR 32.210. 10 CFR 32.210 requires an evaluation using radiation safety criteria from accepted industry standards. Applicable standards for calibration sources may be found in American National Standard Institute (ANSI) standards (e.g., ANSI/HPS N43.6-1997).

ECSs are used for logging oil and gas wells, which use casings to protect fresh water aquifers. Hence, the only potential exposure hazard these sources would present is to workers, and worker exposure could only occur if an ECS were ruptured. If ruptured, workers could be exposed to the radionuclide through ingestion or by absorption

through the skin. However, if the source were ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud which also contains hazardous chemicals and is controlled and monitored to protect workers as part of drilling operations.

The Environmental Assessment (EA) conducted for this rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this amendment. The EA evaluated a worst case scenario of a 3.7 MBq (100 microcuries) source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure from this scenario would be from ingestion of the drilling mud. The most dangerous radionuclide considered for this worst case scenario was curium-250. This radionuclide was used because the rule does not restrict the radionuclide used for ECS sources. Also, the scenario involved a source twice as large as most typical ECSs in use. For this worst case scenario, the estimated dose would be about 56 millirem, which is below the Federal annual dose limit to an individual member of the public of 0.1 rem (100 millirem) or 1 millisievert (see 10 CFR 20.1301). For a 3.7 MBq (100 microcuries) source of americium or cesium (the actual radionuclides used) the estimated dose would be less than 3 millirem and 1 millirem respectively. Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, will not significantly impact public health and safety or the environment.

Section 39.35 specifies leak testing requirements for sealed sources. Because of the small amount of radioactive material in an ECS (by definition less than 3.7 MBq (100 microcuries)) less stringent leak testing requirements are being established for ECSs. Also, the ECS is contained within a logging tool that is designed to withstand significant stress and pressure. The ECS is mounted inside a steel pressure housing in the interior of the logging tool, thereby providing additional encapsulation to protect the ECS from operational impacts. The NRC believes that it is unnecessary and overly burdensome to require that drilling operations stop because an ECS has exceeded the existing 6-month time interval requirement to be leak tested. The Regulatory Analysis conducted for this rulemaking surveyed a sample of the drilling industry to determine a normal maintenance period at which time a licensee would take a logging tool

out of service for routine maintenance or other servicing. The NRC believes this maintenance period would be an appropriate time to conduct any necessary leak testing on an ECS. Although the survey results varied, these tools generally receive some type of out-of-field servicing every 18 months.

Based on this information, and the NRC's belief that ECSs should normally only be leak tested during normal maintenance or when a logging tool is out of service for other repairs, the NRC is requiring that a leak test be performed at a minimum of every three years. This requirement should not be a burden for licensees if the logging tool is being properly maintained and, in fact, should provide licensees some flexibility. This is also consistent with an extended leak test frequency that has been established by license conditions for certain other sealed sources and devices.

Many ECSs are already exempt from all leak testing requirements. Section 39.35 exempts all beta or gamma emitting radioactive material with an activity of 3.7 MBq (100 microcuries) or less. Because cesium-137 is a beta/gamma emitter, all of these types of ECSs are already exempt from the existing leak testing requirements in § 39.35.

2. The NRC is revising existing 10 CFR Part 39 requirements for tritium neutron generator target sources. Tritium neutron generators help determine the porosity of the reservoir rock formation, which indicates the amount of liquid in the reservoir and the reservoir's permeability. Tritium neutron generator target sources are not used in logging while drilling tools. These sources are used in the more traditional well logging procedure where drilling is stopped and the tool is lowered downhole. Because tritium neutron generator target sources produce a significant neutron stream only when a voltage is applied, tritium neutron generator target sources are less hazardous than the typical americium or cesium sources currently being used in well logging applications.

For well logging applications, the NRC is requiring that tritium neutron generator target sources be subject to the requirements of 10 CFR Part 39 except for the sealed source design and performance criteria (§ 39.41), and the well abandonment procedures (§§ 39.15 and 39.77) when a surface casing is used to protect fresh water aquifers, a practice that is standard for oil and gas wells. The potential hazard of these sources when a surface casing is used does not warrant the existing requirements for well abandonment in

the event that the source becomes lost. The design and performance criteria associated with sealed sources for well logging were not intended for tritium neutron generator target sources and the revised regulations will provide clarity.

The NRC is establishing 1,110 GBq (30 curies) of tritium as the limit for a tritium neutron generator target source. Existing tritium neutron generator target sources typically contain less than 740 GBq (20 curies) of tritium. The 1,110 GBq (30 curie) limit would allow licensees flexibility in designing new sources of this type while maintaining their radioactivity within an environmentally safe level.

When these sources are used for logging oil and gas wells, a surface casing is used to protect fresh water aquifers. The only exposure hazard these sources present are to workers if these sources were ruptured and the tritium was ingested. If a tritium source was ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud. As mentioned, this drilling mud contains hazardous chemicals and is controlled and monitored as part of drilling operations.

The EA conducted for this rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this change. The EA evaluated the worst case scenario of a 1,110 GBq (30 curie) tritium source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure would be through ingestion of this drilling mud. For this worst case scenario, the estimated dose would be 14 millirem, which is well below the Federal annual dose limit to an individual member of the public of 100 millirem or 1 millisievert (see 10 CFR 20.1301). Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, will not impact public health and safety or the environment.

3. Section 39.77 provides the requirements for notification and procedures for abandoning irretrievable well logging sources. This section specifies that the NRC must approve implementation of abandonment procedures before abandonment. In some circumstances, such as high well pressures that could lead to fires or explosions, the delay required to notify NRC could cause an immediate threat to public health and safety. The NRC is revising this section to allow licensees to use their judgement to abandon a well immediately, without prior NRC approval, if the licensee believes a delay could cause such a non-radiological

threat. This modification will allow licensees greater procedural latitude. In the rule, the language has been modified to require licensees, in the event of immediate abandonment, to notify the NRC and justify the need for an immediate abandonment after the fact.

4. Section 39.15 provides requirements for abandoning irretrievable sealed sources. The NRC is revising this section to provide performance-based criteria for inadvertent intrusion on the source. This modification will allow licensees greater procedural latitude while continuing to ensure source integrity. The existing requirements may be more restrictive than is necessary to protect an abandoned source, depending upon the individual well abandonment. For example, if a significant amount of drilling equipment is abandoned with the well, the equipment itself may be effective in preventing inadvertent intrusion on the source. However, the abandoned equipment would not meet the existing requirements of § 39.15. The existing paragraph (a)(5)(ii) of § 39.15 had prescriptive requirements for irretrievable well logging sources, specifying the use of a mechanical device to prevent inadvertent intrusion on the source, at a specific location within the abandoned well.

The NRC is requiring that licensees “prevent inadvertent intrusion on the source.” This will require that the source be protected but allow licensees the flexibility to determine the best method. The revision will not affect the requirement in § 39.15(a)(5)(i) that a well logging source be immobilized with a cement plug, the requirement in § 39.15(a)(5)(iii) that a permanent identification plaque be mounted at the surface of the well, or the requirement in § 39.77 that the licensee must obtain NRC approval prior to implementing abandonment procedures (except as provided by the change in § 39.77 for immediate abandonment, as discussed in item 3).

5. Two revisions are being made to § 39.41, “Design and performance criteria for sealed sources.” The first will incorporate within NRC regulations an existing generic exemption for sealed sources that were manufactured before 1989 and met older standards. The second will add an optional acceptable standard by referencing oil-well logging requirements in ANSI/HPS N43.6–1997. The existing requirements will also remain as an option within this section.

The NRC issued a generic exemption from the existing design and performance criteria for sealed sources in 1989. This exemption allows the use of older sealed sources which were not

tested against the existing criteria, but which were tested in accordance with an earlier standard used for well logging sources. This exemption is currently in practice, but was not included in the existing 10 CFR Part 39. The NRC is modifying the regulations to include this existing generic exemption within 10 CFR Part 39.

Sealed sources that were manufactured before July 14, 1989, may use design and performance criteria from the United States of America Standards Institute (USASI) N5.10-1968, “Classification of Sealed Radioactive Sources” or the criteria in § 39.41. The use of the USASI standard is based on an NRC Notice of Generic Exemption published on July 25, 1989 (54 FR 30883). Existing NRC regulations had not incorporated the USASI N5.10–1968 requirements for older sealed sources. The primary difference between the USASI standard and the existing requirements is that the existing requirements includes a vibration test that is consistent with current national standards. The USASI standard considered a vibration test and concluded that, to pass the other requirements, the source would be so rugged there was no reason to include a vibration test.

The exemption allowing the use of the USASI standard was intended to avoid a situation in which well logging licensees might be unnecessarily forced out of business and have to dispose of their sources. This situation could arise because the original source manufacturers tested against the USASI standard, but did not retest these sources against the standards that became effective in 1989. The NRC determined that those sealed source models meeting the USASI standard would not adversely affect public health and safety. These sources had been used for years in operational situations and had demonstrated through actual use that vibration from drilling operations had not caused failure. The survey of licensees conducted for the RA and EA for this rulemaking confirmed that these older sources have not presented a problem during actual use. Therefore, the NRC is codifying within this section the existing practice to use, as an option, the USASI standards for sealed sources that were manufactured before July 14, 1989. Because many of these older sealed sources contain radioactive material with half-lives that allow their continued use (*i.e.*, americium-241 and cesium-137 have half-lives of 458 and 30 years respectively), this modification to the existing regulations is appropriate.

However, a vibration test has been included in ANSI standards since 1977, and by NRC regulations which were promulgated in 1987. Based on survey information done for this rulemaking, it is estimated that the cost to test a source to see if it meets the vibration requirement in § 39.41 is \$2,400. Only the prototype for each design requires testing. The number of prototype designs each year is small. The only survey respondent on this topic indicated that they produce, at most, one new prototype per year and they did not indicate that vibration testing is burdensome. The NRC believes that the cost for vibration testing is not overly burdensome and is consistent with (1) ANSI N542–1977, “Sealed Radioactive Sources, Classification,” published by the National Bureau of Standards [(NBS) currently the National Institute of Standards and Technology] in the 1978 NBS Handbook 126 and (2) ANSI/HPS N43.6–1997, “Sealed Radioactive Sources—Classification” approved in November 1997. ANSI/HPS N43.6–1997 is the revised update to ANSI N542–1977. The NRC has decided to retain the requirements for vibration testing.

The second revision to this section is to meet Public Law 104–113, “National Technology and Transfer Act of 1995” and Office of Management and Budget Circular A–119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.” This law encourages agencies to use “voluntary consensus standards” (*i.e.*, standards developed by a voluntary consensus body and made available to all interested parties). The existing NRC requirements are based on the older ANSI N542–1977 standard, and allow licensees flexibility in determining how to conduct testing and ensuring integrity of the source. The NRC is adding an optional method of meeting the design requirements by referencing the newer, current ANSI standard (ANSI/HPS N43.6–1997) within 10 CFR part 39. Although the existing NRC requirements and ANSI/HPS N43.6–1997 are quite similar, the NRC does not want to eliminate the ability to meet the existing NRC regulatory requirements—that could result in a problem similar to that experienced in 1989. That is, existing approved sealed sources might not have been tested or evaluated exactly as specified in ANSI/HPS N43.6–1997, which could result in well logging licensees having to dispose of acceptable sealed sources. This action does not constitute the establishment of a standard that contains generally applicable requirements. There were no

public comments regarding NRC's approach in the use of these standards.

6. For clarity and to avoid confusion, the NRC is updating § 39.49 because it contains a date that has passed and is no longer appropriate. This section is being amended to remove the obsolete date.

7. The NRC is updating §§ 39.15, 39.35, and 39.41 to conform with the agency's metrication policy published on June 19, 1996 (61 FR 31169), by stating parameter values in dual units with International System of Units (SI) first and with English units in brackets.

#### Comments on the Proposed Rule

This section presents a summary of the principal comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments. It includes a section-by-section description of the proposed changes, comments received, NRC's response, and any changes to the final rule. General comments are included after the specific section comments.

The NRC received five comment letters. Two were from Agreement States and three were from industry. All five commenters supported this rule and four provided specific comments to clarify or improve the proposed rule. Copies of these letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

*Section 39.2, Definitions*, would be amended by adding definitions for an energy compensation source (ECS) and a tritium neutron generator target source.

*Comment:* No comments.

Paragraph 39.15(a)(5)(ii) would be amended to allow a more performance-based approach to prevent inadvertent intrusion on an abandoned source.

*Comment:* One commenter indicated that State regulatory agencies having jurisdiction over drilling and well operations may have well abandonment procedures that are more restrictive than those proposed by the NRC.

*Response:* The commenter indicates that because the State agencies that control drilling and well operations may require more restrictive abandonment procedures, the State radiation control agency may have no choice but to also impose similar procedures. The NRC's intent is to make the rule more performance-based and would hope that States would do likewise, if allowed; however, the requirements in § 39.77(c) are Compatibility Category C which allows States to impose more restrictive

requirements as long as NRC's essential objectives are met.

Paragraphs 39.35(b), (d), (e)(4), (e)(5), and 39.41(d)(1)(v) (previously 39.41(a)(3)(v)) would be amended to meet the NRC's metrication policy.

*Comment:* No comments.

Paragraph 39.35(c)(1) and (c)(2) would allow a 3 year leak testing interval for ECSs.

*Comment:* No comments.

*Section 39.41* would be amended to describe the applicable requirements for a sealed source.

*Comments:* Three commenters provided comments regarding requirements for sealed sources. One commenter requested that an NRC memorandum dated November 1, 1991, be specifically referenced in our regulations because our changes to § 39.41 do not cover all the sources listed in this memorandum. This memorandum lists sources that have been given a generic exemption from the requirements in § 39.41.

Two commenters requested that the new § 39.41(f) be clarified because this section implies that all ECS's are to be registered pursuant to § 32.210. They believe that this is incorrect because this would imply that isotopes considered exempt quantities under § 30.18(a) would be required to be registered pursuant to § 32.210. Also, one commenter believes that based on an NRC position statement, registration is not required in all cases.

*Response:* The NRC memorandum dated November 1, 1991, does not need to be specifically referenced in the regulations because the changes to § 39.41 supersede the memorandum, and cover all the sources listed in this memorandum. However, NUREG-1556, Vol. 3, "Consolidated Guidance About Materials Licenses—Applications for Sealed Source and Device Evaluation and Registration" and Vol. 14, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study License" each include an appendix which provides a list of the sources that fall within the generic exemption.

The NRC staff does intend to require that all ECS's be registered pursuant to § 32.210 or applicable Agreement State regulations. It is expected that ECS's will at least meet appropriate ANSI criteria for calibration sources that can only be assured if the sources are registered by the NRC or an Agreement State. This criteria will be applied regardless of source activity. Although it is true that there is NRC guidance (NUREG-1556, Vol. 3, "Consolidated Guidance About Materials Licenses—

Applications for Sealed Source and Device Evaluation and Registration") which indicates that sources with activities below certain limits do not need to be registered, that guidance will not be applied to ECS's. The NRC staff notes that the guidance also indicates that it is applied on a case-by-case basis in individual licensing situations and that the licensee may be expected to have authorization to possess and use unsealed material in similar quantities. This situation would not apply in this setting.

Section 39.41(f) does not need to be clarified concerning sources obtained per § 30.18(a). The NRC staff believes the commenter may have misinterpreted the regulations regarding exempt quantities. Pursuant to § 30.18, a person possessing very small quantities of radioactive material may be exempt from licensing under limited circumstances. The NRC staff believes, in general, that these limited circumstances would not apply to ECS sources used in a well logging tool, and therefore they would not be exempt. However, if a company does receive a source that NRC has authorized for distribution to persons exempt from licensing, the company could use that source, without modification, in a well logging tool. In this situation, the sources would not need to meet § 39.41 criteria. Note that § 30.18(c) does not allow the incorporation of exempt sources into devices for commercial distribution. Therefore, companies who incorporate these sources into their logging tools, would not be allowed to commercially distribute such tools.

*Section 39.49* would be amended to remove an obsolete date.

*Comment:* No comments.

*Section 39.53* would be added to provide requirements for ECSs.

*Comments:* Two commenters had comments on this section. One believes that there are additional requirements within 10 CFR Part 39 that should apply to ECSs. Specifically, § 39.43 (Inspection, maintenance, and opening of a source or source holder), § 39.61 (Training), § 39.63 (Operating and emergency procedures), and § 39.71 (Security).

The other commenter noted that this section limits ECSs to 100 microcuries based on the belief that there are no ECSs exceeding 50 microcuries. They have specifically licensed ECSs meeting the requirements of 10 CFR Part 39 which contain 200 microcuries of Am-241. Therefore, they request a reassessment of the environmental impact based on 200 microcuries of Am-241 to allow 200 microcuries to be the maximum activity within an ECS.

*Response:* The NRC staff does not agree that there is a need to impose additional 10 CFR Part 39 requirements for possession of these small sources, due to the low risk, and discussed these concerns with the commenter who, after further consideration, agreed. However, when authorizing ECS's, the NRC does intend to provide guidance for license conditions that would prohibit opening the source. This will be done in NUREG-1556, Vol. 14, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study License."

The NRC staff does not agree with the commenter suggestion to increase the ECS limit to 200 microcuries. The Environmental Assessment did not support a 200 microcurie limit for all isotopes. Although the risk varies with individual isotopes, the NRC staff believes that a single limit should be applied to allow efficient implementation. The 100 microcurie limit is consistent with the long standing maximum limit NRC has established for exempting beta/gamma sources from leak testing requirements, which reflects the lower risk associated with lower activity sources of 100 microcuries or less.

*Section 39.55* would be added to provide requirements for tritium neutron generator target sources.

*Comments:* Two commenters had comments on this section. One commenter noted that neutron generator target sources require above-ground testing for operability and calibration. When energized, these devices can produce radiation levels that may constitute "High Radiation Areas." The commenter believes that the revised regulations should allow testing and operation provided arrangements are made via facility design or engineered safety equipment to reduce the radiation levels and ensure adequate written safety procedures have been developed and are in use by trained personnel.

The other commenter noted that these devices typically contain less radioactive material (tritium) than is used in commercially available "glow in the dark" emergency exit signs. The commenter noted that based on the construction of neutron generators, any exposure from a damaged neutron generator would be small compared to an exit sign, and therefore, believes that the proposed rule is appropriate for these devices.

*Response:* The NRC agrees with the first commenter's concept. Tritium sources are and will remain subject to § 39.63—Operating and emergency

procedures. The NRC also agrees with the points made by this commenter.

*Section 39.77(c)(1)(i), (ii), and (d)(9)* would be amended to allow an option to immediately abandon a well without prior NRC approval when the licensee believes there is an immediate threat to public health and safety. For this type of immediate abandonment, the licensee is required to justify to NRC in writing why it was necessary.

*Comment:* One commenter requests clarification how a licensed party will make the decision to abandon these sources (i.e., RSO or authorized user) and what criteria will be used to determine if there is an immediate public health concern from explosions of other hazards. The commenter requests that if these items are not included in the regulations, the NRC identify how they are to be resolved.

*Response:* The purpose of this proposed change was to allow licensees flexibility in the use of their best judgement when there is the possibility of an immediate threat to public health and safety. To add specific requirements as to who makes the on-the-spot decision and what specific criteria they are to use would negate some of the flexibility that the NRC was seeking to add. For example, what should the licensee do if the specified person was not on-site or the situation was not foreseen in established criteria? The NRC expects that this provision will be rarely used. However, if used, the licensee is required to justify why the immediate abandonment was necessary. If, after implementation, the NRC believes that this provision is being misused or used inappropriately, the NRC will consider modifying this section at a later time.

#### *General Comments*

*Comment:* A State commenter noted that not all of their comments on the draft Rulemaking Plan were addressed in the proposed rule.

*Response:* The NRC responded to the comments that the States made on the draft Rulemaking Plan in the final Rulemaking Plan. Although these comments and responses were not repeated in the **Federal Register** notice, they were incorporated, where appropriate, in the proposed rule.

*Comment:* A commenter would like the rule to include requirements for tool design and loading of all sources. The commenter noted that during a recent investigation of loading procedures, they found that a few States and at least one NRC region are not consistently evaluating the design of tools or their loading procedures during the licensing process. If this is the case, the

commenter does not believe that NRC can assume that the well logging tool will afford significant protection for any source much less the ECS sources. The commenter noted that the proposed regulation states that part of the reason for many of the exemptions for the ECS sources is the additional protection provided by the logging tool.

*Response:* Historically, the NRC has not regulated source holders or the well logging devices in which the source holders or sources are placed. The sealed sources themselves must meet 10 CFR Part 39 requirements that are essentially equivalent to ANSI criteria for use in well logging and does not take into account any protection provided by the tool or source holder. NRC also notes that there has been no history of problems with the source-tool combinations.

*Comment:* A commenter noted that it was approached in 1993 by a well logging licensee to implement rule changes regarding ECSs used in logging while drilling (LWD) operations. The commenter noted that this was the only licensee in the State using ECSs and that they preferred to handle this technology through license conditions. As of June 1999, only one of Texas's licensees has requested changes to allow for LWD technology. The commenter asks whether the NRC has assessed how many well logging licensees are currently using LWD technology.

*Response:* The NRC conducted a limited survey of nine licensees (the NRC staff did not feel it was necessary to conduct a larger survey that would have required OMB approval) in the preparation of the proposed rule. Of these nine, six use ECSs and one is planning to use an ECS in the future. Based on this response, plus the fact that four of these licensees use neutron generator target sources, the NRC believes that proposing generic requirements is appropriate.

*Comment:* A commenter supports the proposed changes and noted that these changes offer the well logging industry simplified rules without decreasing public safety. The commenter also noted the significant differences in design between the stand-alone sources used in logging tools, and the permanent aspect of ECSs and neutron generator target sources that are built into logging tools. The commenter noted that because the ECSs and neutron generator target sources are protected from the well conditions and have much smaller inherent risks, the current requirements in 10 CFR Part 39 are too restrictive.

*Response:* The NRC agrees with the points made by this commenter.

*Comment:* A commenter noted that the Supplementary Information and Introduction sections of the proposed rule implied that only LWD tools utilize ECSs. The commenter noted that this is not the case and that ECSs have been in use for many years within many standard wireline logging tools.

*Response:* The NRC will clarify this information in the preamble by changing the implication that ECS's are only used in logging while drilling tools. This will not impact the regulatory text to the final rule.

*Final rule:* As noted above, the preamble will be clarified. There are no changes being made to the regulatory text of the final rule.

### Specific Changes in Regulatory Text

The following section is provided to assist the reader in understanding the specific changes made to each section or paragraph in 10 CFR Part 39. For clarity of content in reading a section, much of that particular section may be repeated, although only a minor change would be made. Using this section should allow the reader to effectively review the specific changes without reviewing existing material that has been included for content, but has not been significantly changed.

*Section 39.2:* This is being revised to add two new definitions for ECS and tritium neutron generator target source.

Paragraph 39.15(a)(5)(ii): This is being revised to allow a more performance-based approach to prevent inadvertent intrusion on an abandoned source.

Paragraph 39.15(a)(5)(iii): This is being revised to meet the NRC's metrification policy.

Paragraph 39.35(b): This is being revised to meet the NRC's metrification policy.

Paragraph 39.35(c)(1): This essentially repeats the existing paragraph on leak testing frequency, but notes that ECSs are not included in this paragraph.

Paragraph 39.35(c)(2): This is a new paragraph allowing a 3 year leak testing interval for ECSs.

Paragraph 39.35(d): This is being revised to meet the NRC's metrification policy.

Paragraph 39.35(e)(1): This is an editorial change to indicate that hydrogen-3 and tritium are the same.

Paragraphs 39.35(e)(4) and (5): This is being revised to meet the NRC's metrification policy.

Section 39.41 has been significantly revised as described below:

Paragraph 39.41(a): This is a new paragraph describing the applicable requirements for a sealed source which includes requirements from the existing § 39.41(a)(1) and (2).

Paragraph 39.41(b): This is a new paragraph to allow pre-1989 sources to meet USASI standards.

Paragraph 39.41(c): This is a new paragraph providing for the use of current ANSI standards.

Paragraph 39.41(d): This replaces the existing § 39.41(a)(3).

Paragraph 39.41(d)(1)(v): This is being revised to meet the NRC's metrification policy (the existing § 39.41(a)(3)(v)).

Paragraph 39.41(e): This replaces the existing § 39.41(b) and is edited to be consistent with the above changes.

Paragraph 39.41(f): This is a new paragraph clarifying that this section does not apply to ECSs.

*Section 39.49:* This is being revised to eliminate an obsolete date.

*Section 39.53:* This is a new section providing requirements for ECSs.

*Section 39.55:* This is a new section providing requirements for tritium neutron generator target sources.

Paragraphs 39.77(c)(1)(i) and (ii): This is being revised to allow an option to immediately abandoning a well without receiving prior NRC approval when the licensee believes there is an immediate threat to public health and safety.

Paragraph 39.77(d)(9): This is a new paragraph requiring the licensee to justify in writing why it was necessary to immediately abandon a well without prior NRC approval.

### Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

### Compatibility of Agreement State Regulations

The compatibility of the provisions in 10 CFR Part 39 have been determined in accordance with the NRC's "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517)." The definitions for an "Energy compensation source" and a "Tritium neutron generator target source" are assigned Compatibility Category B. Agreement States will need to adopt essentially identical definitions. Since the sources are routinely transported across jurisdictional boundaries for use, this level of compatibility is needed to assure uniform regulation. The new § 39.53, *Energy compensation source*, and § 39.55, *Tritium neutron generator target source*, are assigned Compatibility

Category C. Agreement States are not required to adopt identical rules, however, they must adopt rules that address the essential safety objectives of, and are no less stringent than, the NRC sections. The NRC is not changing the compatibility of those sections of 10 CFR Part 39 that are being modified. The existing Compatibility Categories for the modified sections are: Section 39.41, Compatibility Category B; and §§ 39.15, 39.35, 39.49, 39.77(c) and (d), Compatibility Category C.

Specific information about the NRC's Compatibility Policy and the levels of compatibility assigned to the existing rule may be found at the OSP Procedures area of the Office of State Program's Web site, <http://www.hsr.d.gov/nrc/home.html>. [View Procedures SA-200 and SA-201]

### Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The rule will modify NRC regulations dealing with: (1) Low activity energy compensation sources; (2) tritium neutron generator target sources; (3) specific abandonment procedures in the event of an immediate threat; (4) changes to requirements for inadvertent intrusion on an abandoned source; (5) the codification of an existing generic exemption; (6) the removal of an obsolete date; and (7) updating 10 CFR Part 39 to be consistent with the Commission's metrification policy. The environmental assessment evaluated the maximum annual public health risk to members of the public as a result of these changes and determined that there is no significant environmental impact as a result of the changes.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6196.

**Paperwork Reduction Act Statement**

This final rule increases the burden on licensees to justify in writing the immediate threat to public health and safety that resulted in the implementation of abandonment procedures prior to NRC approval. The burden to include the justification in the existing report required in 10 CFR 39.77(d) is estimated to increase from 4 hours to 4.25 hours per impacted report. Because the burden for this information collection requirement is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150-0130.

**Public Protection Notification**

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

**Regulatory Analysis**

The Commission has prepared a final regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6196.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. All of the amendments are to 10 CFR Part 39 and are intended to either reduce regulatory burdens from unnecessary requirements or to clarify and update regulations to reduce confusion. Therefore, any economic impact to a small entity using 10 CFR Part 39 should be either neutral or positive.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects in 10 CFR Part 39**

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 39.

**PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING**

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

**Authority:** Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 39.2 is amended by adding definitions, in their proper alphabetic order, of the terms *energy compensation source* and *tritium neutron generator target source* to read as follows:

**§ 39.2 Definitions.**

*Energy compensation source* (ECS) means a small sealed source, with an activity not exceeding 3.7 MBq [100 microcuries], used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

\* \* \* \* \*  
*Tritium neutron generator target source* means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.  
\* \* \* \* \*

3. Section 39.15 is amended by revising paragraph (a)(5)(ii) and the introductory text of paragraph (a)(5)(iii) to read as follows:

**§ 39.15 Agreement with well owner or operator.**

(a) \* \* \*

(5) \* \* \*

(ii) A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and

(iii) A permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, must be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque must be at least 17 cm [7 inches] square and 3 mm [1/8-inch] thick. The plaque must contain—  
\* \* \* \* \*

4. Section 39.35 is amended by revising paragraphs (b), (c), (d)(1), (e)(1), (e)(4) and (e)(5) to read as follows:

**§ 39.35 Leak testing of sealed sources.**

\* \* \* \* \*

(b) *Method of testing.* The wipe of a sealed source must be performed using a leak test kit or method approved by the Commission or an Agreement State. The wipe sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq [0.005 microcuries] of radioactive material on the test sample and must be performed by a person approved by the Commission or an Agreement State to perform the analysis.

(c) *Test frequency.* (1) Each sealed source (except an energy compensation source (ECS)) must be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(2) Each ECS that is not exempt from testing in accordance with paragraph (e) of this section must be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before the transfer, the ECS may not be used until tested.

(d) *Removal of leaking source from service.* (1) If the test conducted pursuant to paragraphs (a) and (b) of this section reveals the presence of 185 Bq [0.005 microcuries] or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated,

have it decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions.

\* \* \* \* \*

(e) \* \* \*

(1) Hydrogen-3 (tritium) sources;

\* \* \* \* \*

(4) Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and

(5) Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

5. Section 39.41 is revised to read as follows:

**§ 39.41 Design and performance criteria for sources.**

(a) A licensee may use a sealed source for use in well logging applications if—

(1) The sealed source is doubly encapsulated;

(2) The sealed source contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) Meets the requirements of paragraph (b), (c), or (d) of this section.

(b) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the requirements of USASI N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in paragraph (c) or (d) of this section.

(c) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6-1997, "Sealed Radioactive Sources—Classification."

(d) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications, if—

(1) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(i) *Temperature.* The test source must be held at  $-40^{\circ}\text{C}$  for 20 minutes,  $600^{\circ}\text{C}$  for 1 hour, and then be subject to a thermal shock test with a temperature drop from  $600^{\circ}\text{C}$  to  $20^{\circ}\text{C}$  within 15 seconds.

(ii) *Impact test.* A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(iii) *Vibration test.* The test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(iv) *Puncture test.* A 1 gram hammer and pin, 0.3 cm pin diameter, must be

dropped from a height of 1 m onto the test source.

(v) *Pressure test.* The test source must be subject to an external pressure of  $1.695 \times 10^7$  pascals [24,600 pounds per square inch absolute].

(e) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to sealed sources that contain licensed material in gaseous form.

(f) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to energy compensation sources (ECS). ECSs must be registered with the Commission under § 32.210 of this chapter or with an Agreement State.

6. Section 39.49 is revised to read as follows:

**§ 39.49 Uranium sinker bars.**

The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION—RADIOACTIVE—DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

7. Section 39.53 is added to read as follows:

**§ 39.53 Energy compensation source.**

The licensee may use an energy compensation source (ECS) which is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 3.7 MBq [100 microcuries].

(a) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.35, 39.37 and 39.39.

(b) For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.15, 39.35, 39.37, 39.39, 39.51, and 39.77.

8. Section 39.55 is added to read as follows:

**§ 39.55 Tritium neutron generator target source.**

(a) Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 MBq [30 curies] and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part except §§ 39.15, 39.41, and 39.77.

(b) Use of a tritium neutron generator target source, containing quantities exceeding 1,110 MBq [30 curies] or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this part except § 39.41.

9. Section 39.77 is amended by revising paragraph (c)(1), redesignating

paragraphs (d)(9) and (d)(10) as paragraphs (d)(10) and (d)(11), and adding a new paragraph (d)(9) to read as follows:

**§ 39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.**

\* \* \* \* \*

(c) \* \* \*

(1) Notify the appropriate NRC Regional Office by telephone of the circumstances that resulted in the inability to retrieve the source and—

(i) Obtain NRC approval to implement abandonment procedures; or

(ii) That the licensee implemented abandonment before receiving NRC approval because the licensee believed there was an immediate threat to public health and safety; and

\* \* \* \* \*

(d) \* \* \*

(9) The immediate threat to public health and safety justification for implementing abandonment if prior NRC approval was not obtained in accordance with paragraph (c)(1)(ii) of this section;

\* \* \* \* \*

Dated at Rockville, Maryland, this 3rd day of April, 2000.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 00-9468 Filed 4-14-00; 8:45 am]

BILLING CODE 7590-01-P

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Part 910**

[No. 2000-19]

RIN 3069-AB02

**Amendments to the Freedom of Information Act Regulation**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending its Freedom of Information Act (FOIA) regulation to reflect an agency reorganization. Responsibility for administering the Finance Board's FOIA program has been transferred from the Executive Secretariat to the Office of General Counsel and the Deputy General Counsel of the Administrative Law Division has replaced the Secretary to the Board of Directors as the Finance Board's FOIA officer.

**EFFECTIVE DATE:** The final rule will become effective on April 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Janice A. Kaye, Attorney-Advisor, Office of General Counsel, by telephone at 202/408-2505, by electronic mail at kajej@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

**SUPPLEMENTARY INFORMATION:**

As a result of an agency reorganization, responsibility for administering the Finance Board's FOIA program was transferred from the Executive Secretariat to the Office of General Counsel effective March 20, 2000. As part of the transfer of responsibility, the Deputy General Counsel of the Administrative Law Division has replaced the Secretary to the Board of Directors as the Finance Board's FOIA officer. The FOIA officer is authorized to make all initial denial determinations under the Finance Board's FOIA regulation. The Finance Board is amending its FOIA regulation to conform to the reassignment of responsibility and authority. More specifically, the Finance Board is replacing the term "Secretary to the Board" and the term "Finance Board" with the term "FOIA Officer" where appropriate.

**Notice and Public Participation**

Because it is in the public interest to conform the Finance Board's FOIA regulation to the agency reorganization that already has taken effect, the Finance Board for good cause finds that the notice and publication requirements of the Administrative Procedures Act are unnecessary. See 5 U.S.C. 553(b)(3)(B). Accordingly, the Finance Board is promulgating these technical, procedural changes as a final rule.

**Effective Date**

For the reasons stated in part III above, the Finance Board for good cause finds that the final rule should become effective on April 17, 2000. See 5 U.S.C. 553(d)(3).

**Regulatory Flexibility Act**

The Finance Board is adopting the amendments to part 910 in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2), 603(a).

**Paperwork Reduction Act**

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 et seq. Consequently, the Finance Board has not submitted

any information to the Office of Management and Budget for review.

**List of Subjects in Part 910**

Confidential business information, Federal home loan banks, Freedom of information.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 910 as follows:

**PART 910—FREEDOM OF INFORMATION ACT REGULATION**

1. The authority citation for part 910 continues to read as follows:

**Authority:** 5 U.S.C. 552; 52 FR 10012 (Mar. 27, 1987).

2. In part 910, remove the term "Secretary to the Board" everywhere it appears and add in its place the term "FOIA Officer."

3. In § 910.1, remove the definition of the term "Secretary to the Board" and add a definition of the term "FOIA Officer" to read as follows:

**§ 910.1 Definitions.**

\* \* \* \* \*

*FOIA Officer* means the Finance Board employee who is authorized to make determinations as provided in this part. The mailing address for the FOIA Officer is Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

\* \* \* \* \*

4. Revise § 910.3(b) to read as follows:

**§ 910.3 Requests for records.**

\* \* \* \* \*

(b) *Incomplete requests.* If a request does not meet all of the requirements of paragraph (a) of this section, the FOIA Officer may advise the requester that additional information is needed. If the requester submits a corrected request, the FOIA Officer shall treat the corrected request as a new request.

5. Amend § 910.4 by revising paragraph (c)(3), the first sentence of paragraph (d)(1), and paragraph (e) to read as follows:

**§ 910.4 Finance Board response to requests for records.**

\* \* \* \* \*

(c) \* \* \*

(3) The opportunity for the requester to either limit the scope of the request so that the FOIA Officer may process it in accordance with paragraph (a) of this section, or arrange an alternative time frame for processing the request or a modified request.

(d) *Expedited processing.* (1) The FOIA Officer shall process a request for records as soon as practicable if it is

determined that expedited processing is appropriate or the requester demonstrates a compelling need. \* \* \*

\* \* \* \* \*

(e) *Providing responsive records.* The FOIA Officer shall provide one copy of a record to a requester in any form or format requested if the record is readily reproducible by the Finance Board in that form or format by regular U.S. mail to the address indicated in the request unless other arrangements are made, such as taking delivery of the document at the Finance Board. At the option of the requester and upon the requester's agreement to pay fees in accordance with § 910.9, the FOIA Officer shall provide copies by facsimile transmission or other express delivery methods.

6. Revise § 910.7 to read as follows:

**§ 910.7 Records of financial regulatory agencies held by the Finance Board.**

The Finance Board shall not disclose an examination, operating, or condition report, or other record prepared by, on behalf of, or for the use of a financial regulatory agency. Upon a receipt of a request for such records, the FOIA Officer shall promptly refer the request to the appropriate agency and notify the requester of the referral.

7. Amend § 910.8 by revising paragraph (a)(1) to read as follows:

**§ 910.8 Appeals.**

(a) *Procedure.* (1) If the FOIA Officer has denied a request in whole or in part, the requester may appeal the denial by submitting a written application to the FOIA Officer stating the grounds for the appeal within 30 working days of the date of the determination under § 910.4.

\* \* \* \* \*

8. Amend § 910.9 by revising paragraph (c), paragraph (d) introductory text, paragraph (d)(3)(ii) introductory text, paragraph (e), paragraphs (f)(3) through (f)(5), and paragraph (g) introductory text to read as follows:

**§ 910.9 Fees.**

\* \* \* \* \*

(c) *Interest.* The Finance Board may assess interest at the rate prescribed in 31 U.S.C. 3717 on any unpaid fees beginning 31 days after the earlier of the date of the determination under § 910.4 or the date a fee statement is mailed to a requester. Interest shall accrue from such date.

(d) *Exceptions.* Notwithstanding paragraphs (a) or (b) of this section, the FOIA Officer may determine not to assess a fee or to reduce a fee if:

(3) \* \* \*

(ii) In determining whether disclosure of a record is in the public interest, the FOIA Officer shall consider whether the record:

\* \* \* \* \*

(e) *Aggregating requests.* If the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the FOIA Officer may aggregate such requests and assess fees in accordance with this section.

(f) *Collecting fees.* \* \* \*

(3) Prior to disclosing any record, the FOIA Officer may require a requester to agree in writing to pay actual fees and interest incurred in accordance with this section if the estimated fee will likely exceed \$25 but not \$250.

(4) The FOIA Officer may require a requester to pay an estimated fee in advance if:

(i) It is determined that the fee will likely exceed \$250; or

(ii) The requester has previously failed to pay a fee assessed under this section within 30 days of the earlier of the date of the determination under § 910.4 or the date a fee statement was mailed to a requester.

(5) The Finance Board shall promptly refund to a requester any estimated advance fee paid under paragraph (f)(4) of this section that exceeds the actual fee. The FOIA Officer shall assess the requester for the amount by which the actual fee exceeds the estimated advance fee payment.

(g) *Fee schedule.* The FOIA Officer shall assess fees in accordance with the following schedule:

\* \* \* \* \*

Dated: April 6, 2000.

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

**Bruce A. Morrison,**

*Chairman.*

[FR Doc. 00-9454 Filed 4-14-00; 8:45 am]

BILLING CODE 6725-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-252-AD; Amendment 39-11677; AD 99-13-08 R1]

RIN 2120-AA64

#### Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to all Lockheed Model L-1011-385 series airplanes, that currently requires inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. The actions specified by that AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage. This amendment, for certain airplanes, extends the compliance time for the modification of the web-to-cap fastener holes, and eliminates references to modification of the outboard spar.

**DATES:** Effective May 22, 2000.

The incorporation by reference of Lockheed Service Bulletin 093-57-218, dated April 11, 1996, was approved previously by the Director of the Federal Register as of June 27, 1996 (61 FR 29642, June 12, 1996).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 28, 1999 (64 FR 33386, June 23, 1999).

**ADDRESSES:** The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. 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, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337-2748; telephone (770) 703-6063; fax (770) 703-6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39)

by revising AD 99-13-08, amendment 39-11202 (64 FR 33386, June 23, 1999), which is applicable to all Lockheed Model L-1011-385 series airplanes, was published in the **Federal Register** on November 8, 1999 (64 FR 60750). The action proposed to continue to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; and various follow-on actions. The action also proposed, for certain airplanes, to extend the compliance time for the modification of the web-to-cap fastener holes, and eliminate references to modification of the outboard spar.

#### 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 235 Lockheed Model L-1011-385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD. The requirements of this AD will not add any new additional economic burden on affected operators. Also, because the existing AD states the cost impact only for the required modification and not for the acceptable alternatives that were provided for certain airplanes, no change to the cost impact information is necessary. The current costs associated with this amendment are reiterated in their entirety (as follows) for the convenience of affected operators:

The inspections that are currently required by AD 99-13-08 take approximately 13 work hours 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 inspections on U.S. operators is estimated to be \$91,260, or \$780 per airplane, per inspection cycle.

The modification that is currently required by AD 99-13-08 takes approximately 100 work hours 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 modification on U.S. operators is estimated to be \$702,000, or \$6,000 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 removing amendment 39-11202 (64 FR 33386, June 23, 1999), and by adding a new airworthiness directive (AD), amendment 39-11677, to read as follows:

**99-13-08 R1 Lockheed:** Amendment 39-11677. Docket 99-NM-252-AD. Revises AD 99-13-08, Amendment 39-11202.

**Applicability:** All Model Model L-1011-385 series 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 (h)(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 fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage, accomplish the following:

#### Restatement of Actions Required by AD 99-13-08, Amendment 39-11202

##### Inspections

(a) Perform a visual inspection to detect signs of cracking and other discrepancies (*i.e.*, corrosion, fastener looseness, nicks, scratches, or other surface damage) of the web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, as specified in Figure 2 of Lockheed Service Bulletin 093-57-218, dated April 11, 1996, or Revision 1, dated September 9, 1996; and of the web area around those fasteners; in accordance with Part I of the Accomplishment Instructions of that service bulletin. Perform the inspection at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Except as provided by paragraph (a)(2) of this AD: Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093-57-218, dated April 11, 1996, or Revision 1, dated September 9, 1996, or within 10 days after June 27, 1996 (the effective date of AD 96-12-24, amendment 39-9667), whichever occurs later.

(2) For airplanes on which the wing rear spar was modified prior to June 27, 1996, in accordance with one of the Lockheed service bulletins listed in paragraph (a)(2)(ii) of this AD, accomplish the inspection as follows:

(i) Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093-57-218, dated April 11, 1996, or Revision 1, dated September 9, 1996, calculated from the time the wing rear spar was modified (rather than from the date of manufacture of the airplane), or within 10 days after June 27, 1996, whichever occurs later.

(ii) This paragraph applies to airplanes on which the wing rear spar has been modified

in accordance with one of the following service bulletins:

(A) Lockheed Service Bulletin 093-57-184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; or

(B) Lockheed Service Bulletin 093-57-196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; or

(C) Lockheed Service Bulletin 093-57-203, Revision 3, dated October 28, 1991, or Revision 4, dated March 27, 1995; or

(D) Lockheed Service Bulletin 093-57-215, dated April 11, 1996.

##### Repetitive Inspections

(b) If no sign of cracking or other discrepancy is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093-57-218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

##### Corrective Actions

(c) If any sign of cracking is found during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, perform either eddy current surface scan inspections, or bolt hole eddy current inspections, as appropriate, to confirm cracking, in accordance with Lockheed Service Bulletin 093-57-218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(1) If no cracking is confirmed, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of the service bulletin.

(2) If any cracking is confirmed, prior to further flight, repair it in accordance with the service bulletin.

##### Modification

(d) Except as provided by paragraph (e) or (f) of this AD, as applicable: Prior to the accumulation of the number of landings specified as the threshold in Table 1 of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996; or within 12 months after July 28, 1999 (the effective date of AD 99-13-08, amendment 39-11202); whichever occurs later; modify the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343 in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996.

(e) For Model L-1011-385-3 series airplanes: Accomplishment of the modification specified in paragraph (e)(1) or (e)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the upper and lower caps of the rear spar between IWS 228 and IWS 346 in accordance with Part I of the Accomplishment Instructions of Lockheed Service Bulletin 093-57-203, Revision 3, dated October 28, 1991; or Revision 4, dated March 27, 1995. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996. Or

(2) Modify the left and right wing rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-57-215, dated April 11, 1996. Within the thresholds specified in Table I of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093-57-215, dated April 11, 1996), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996.

**Note 2:** Accomplishment of the modification of the upper and lower caps of the rear spar between IWS 228 and IWS 346, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-57-203, dated July 25, 1988, Revision 1, dated August 11, 1989, or Revision 2, dated January 25, 1991, is considered acceptable for compliance with the modification specified in paragraph (e)(1) of this amendment.

(f) For Model L-1011-385-1 series airplanes: Accomplishment of the modification specified in paragraph (f)(1) or (f)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-57-184, Revision 6, dated October 28, 1991; or Revision 7, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093-57-184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996. Or

(2) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-57-196, Revision 5, dated October 28, 1991; or Revision 6, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093-57-218,

Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093-57-196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996.

**Note 3:** Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-57-184, Revision 2, dated October 12, 1988; Revision 3, dated August 11, 1989; Revision 4, dated May 16, 1990; or Revision 5, dated May 23, 1990, is considered acceptable for compliance with the modification specified in paragraph (f)(1) of this amendment.

**Note 4:** Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-57-196, Revision 1, dated October 25, 1988; Revision 2, dated July 31, 1989; Revision 3, dated March 7, 1990; or Revision 4, dated July 1, 1991, is considered acceptable for compliance with the modification specified in paragraph (f)(2) of this amendment.

(g) If any condition (*i.e.*, number of discrepant fasteners per stiffener bay, or cracking) is identified during the accomplishment of the modification specified in Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996, and that condition exceeds the limits specified in paragraph B.(3) of Part II of the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

#### Alternative Method of Compliance

(h)(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, Atlanta ACO. 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 96-12-24, amendment 39-9667, or AD 99-13-08, amendment 39-11202, are approved as alternative methods of compliance with paragraph (d) of this AD.

**Note 5:** 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

(i) 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

(j) Except as provided by paragraph (g) of this AD, the actions shall be done in accordance with the following service bulletins, as applicable: Lockheed Service Bulletin 093-57-184, Revision 6, dated October 28, 1991; or Lockheed Service Bulletin 093-57-184, Revision 7, dated December 6, 1994; Lockheed Service Bulletin 093-57-196, Revision 5, dated October 28, 1991; or Lockheed Service Bulletin 093-57-196, Revision 6, dated December 6, 1994; Lockheed Service Bulletin 093-57-203, Revision 3, dated October 28, 1991; or Lockheed Service Bulletin 093-57-203, Revision 4, dated March 27, 1995; Lockheed Service Bulletin 093-57-215, dated April 11, 1996; and Lockheed Service Bulletin 093-57-218, dated April 11, 1996; or Lockheed Service Bulletin 093-57-218, Revision 1, dated September 9, 1996.

(1) The incorporation by reference of Lockheed Service Bulletin 093-57-218, dated April 11, 1996, was approved previously by the Director of the Federal Register as of June 27, 1996 (61 FR 29642, June 12, 1996).

(2) The incorporation by reference of the remainder of the service bulletins listed above, was approved previously by the Director of the Federal Register as of July 28, 1999 (64 FR 33386, June 23, 1999).

(3) Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on May 22, 2000.

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

**Donald L. Riggins,**

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

[FR Doc. 00-8992 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 99-AGL-60]

#### Modification of Class E Airspace; Watertown, SD, and Britton, SD

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Watertown, SD, and Britton, SD. A review of the controlled airspace within the States of North Dakota and

South Dakota conducted after the cancellation of a portion of Federal Airway 220 (V-220), Airspace Docket No. 98-AGL-49, published September 7, 1999, indicated several small portions of Class G uncontrolled airspace being created between Wahpeton, ND, and Brookings, SD. Controlled airspace extending upward from 1200 feet above ground level (AGL) is needed to allow the FAA to provide safe and efficient air traffic control services for aircraft executing enroute and terminal instrument procedures into and out of numerous airports in that area. These small portions of uncontrolled airspace cause confusion for the both pilots and controllers and do not allow for consistent application of instrument flight rules in a critical area servicing these airports. This action eliminates these Class G portions of airspace between Wahpeton, ND, and Brookings, SD, by revising the Class E airspace for Watertown, SD. This revision causes a minor change to the airspace exclusions in the legal description for the Class E airspace for Britton, SD.

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

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Wednesday, February 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Watertown, SD, and Britton, SD (65 FR 4910). The proposal was to modify controlled airspace extending upward from 1200 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 71 modifies Class E airspace at Watertown, SD, and Britton, SD, to accommodate aircraft executing instrument flight procedures into and out of numerous airports in southeastern North Dakota, northeastern South Dakota, and western Minnesota. Several small portions of uncontrolled airspace between Wahpeton, ND, and Brookings, SD, created as a result of the cancellation of a portion of Federal Airway 220 (V-220), Airspace Docket No. 98-AGL-49, published September 7, 1999 (64 FR 48527), are eliminated. The area will be depicted on appropriate aeronautical charts.

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959-1963 Comp., p. 389.

**§ 71.1 [Amended]**

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

September 16, 1999, is amended as follows:

\* \* \* \* \*

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

\* \* \* \* \*

**AGL SD E5 Watertown, SD [Revised]**

Watertown Municipal Airport, SD  
(Lat. 44°54'51" N., long. 097°09' 17" W.)  
Watertown VORTAC  
(Lat. 44°58'47" N., long. 097°08'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Watertown Municipal Airport and within 4.0 miles each side of the Watertown VORTAC 006° radial extending from the 6.8-mile radius to 10.6 miles north of the airport, and within 1.9 miles each side of the south localizer course extending from the 6.8-mile radius to 11.7 miles south of the airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by lat. 46°30'00" N., on the east by the Minnesota/North Dakota and Minnesota/South Dakota borders, on the south by lat. 44°30'00" N, and on the west by long. 097°00'00" W, excluding that airspace within the Fargo, ND, 1,200 foot Class E airspace area and all Federal airways.

\* \* \* \* \*

**AGL SD E5 Britton, SD [Revised]**

Britton Municipal Airport, SD  
(Lat. 45°48'55" N., long. 097°44'35" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Britton Municipal Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the west by long. 98°30'00" W, on the north by lat. 46°30'00" N, on the east by long. 97°00'00" W, and on the south by lat. 44°30'00" N, excluding the Fargo, ND, Huron, SD, and Aberdeen, SD, 1,200 foot Class E airspace areas and all Federal airways.

\* \* \* \* \*

Issued in Des Plaines, Illinois on March 27, 2000.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 00-9404 Filed 4-14-00; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 99-AGL-59]

**Modification of Class E Airspace; Coldwater, MI**

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Coldwater, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 06 has been developed for Branch County Memorial Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

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

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Wednesday, February 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Coldwater, MI (65 FR 4909). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 71 modifies Class E airspace at Coldwater, MI, to accommodate aircraft executing the proposed GPS Rwy 06 SIAP for Branch County Memorial Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959-1963 Comp., p. 389.

**71.1 [Amended]**

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

\* \* \* \* \*

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

\* \* \* \* \*

**AGL MI E5 Coldwater, MI [Revised]**

Coldwater, Branch County Memorial Airport, Mi

(Lat. 41°56'00" N., long. 85°03'09" W.)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Branch County Memorial Airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on March 27, 2000.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 00-9405 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 99-AGL-58]

**Modification of Class E Airspace; Saginaw, MI**

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

**ACTION:** Final rule

**SUMMARY:** This action modifies Class E airspace at Saginaw, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Saginaw County H.W. Browne Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increase the radius of the existing controlled airspace for this airport.

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

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Wednesday, February 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Saginaw, MI (65 FR 4911). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 71 modifies Class E airspace at Saginaw,

MI, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP for Saginaw County H.W. Browne Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

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

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

##### **§ 71.1 [Amended]**

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

\* \* \* \* \*

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

\* \* \* \* \*

##### **AGL MI E5 Saginaw, MI [Revised]**

MBS International Airport, MI  
(Lat. 43°31'58" N., long. 84°04'47" W.)  
Saginaw County H. W. Browne Airport, MI  
(Lat. 43°26'00" N., long. 83°51'45" W.)  
Bay City, James Clements Municipal Airport,  
MI

(Lat. 43°32'49" N., long. 83°53'44" W.)  
Midland, Jack Barstow Airport, MI  
(Lat. 43°39'46" N., long. 84°15'41" W.)  
Saint Mary's Hospital, MI  
Point in Space Coordinates  
(Lat. 43°24'54" N., long. 83°56'27" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of MBS International Airport, within a 6.5-mile radius of Saginaw County H. W. Browne Airport, within a 6.4-mile radius of James Clements Municipal Airport, within a 6.3-mile radius of Jack Barstow Airport, and within a 6.0-mile radius of the Point in Space serving Saint Mary's Hospital.

\* \* \* \* \*

Issued in Des Plaines, Illinois on March 27, 2000.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 00-9406 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-13-M**

## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 305**

#### **Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”)**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule revision.

**SUMMARY:** The Federal Trade Commission (“Commission”) revises Table 1 in section 305.9 of the Commission’s Appliance Labeling Rule (“the Rule”), to incorporate the latest figures for average unit energy costs as published by the Department of Energy (“DOE”) in the **Federal Register** on February 7, 2000. Table I sets for the representative average unit energy costs for five residential energy sources, which the Commission revises periodically on the basis of updated information provided by DOE.

**DATES:** The revisions to § 305.9(a) are effective April 17, 2000. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the **SUPPLEMENTARY INFORMATION** Section, below.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On November 19, 1979, the Federal Trade Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act

(“EPCA”), 42 U.S.C. 6201.<sup>1</sup> The Rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9(a) of the Rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the Rule. As stated in § 305.9(b), the Table is to be revised periodically on the basis of updated information provided by DOE.

On February 7, 2000, DOE published the most recent figures for representative average unit energy costs (65 FR 5860). These energy cost figures are for manufacturers to use, in accordance with the guidelines that appear below, to calculate the required secondary annual operating cost figures at the bottom of required Energy Guides for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. The energy cost figures also are for manufacturers of furnaces, boilers, central air conditioners, and heat pumps to use, also in accordance with the below guidelines, to calculate annual operating cost for required fact sheets. And, the cost figures are for use, in accordance with the guidelines, in approved industry directories listing these products.

The DOE cost figures are not necessary for making data submissions to the Commission. The required energy use information that manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must submit under § 305.8 of the Rule is no longer operating cost; it is now energy consumption (kiloWatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil).

Accordingly, Table 1 is revised to reflect these latest cost figures, as set forth below. The current and future obligations of manufacturers with

<sup>1</sup> 44 FR 66466. Since its promulgation, the rule has been amended five times to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), certain plumbing products (58 FR 54955, Oct. 25, 1993), certain lamp products (59 FR 25176, May 13, 1994), and pool heaters and certain residential water heater types (59 FR 49556, Sept. 28, 1994). Obligations under the rule concerning fluorescent lamp ballasts, lighting products, plumbing products and pool heaters are not affected by the cost figures in this notice.

respect to the use of DOE's cost figures are as follows:

**For Labeling of Refrigerators, Refrigerator-Freezers, Freezers, Clothes Washers, Dishwashers, Water Heaters, and Room Air Conditioners<sup>2</sup>**

Manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners must use the National Average Representative Unit Costs published today on labels for their products only after the Commission publishes new ranges of comparability for those products that are based on today's cost figures. In the meantime, they must continue to use past DOE cost figures as follows:

**Storage-Type Water Heaters**

Manufacturers of storage-type water heaters must continue to use the 1994 DOE cost figures (8.41 cents per kilo Watt-hour for electricity, 60.4 cents per therm for natural gas, \$1.054 per gallon for No. 2 heating oil, and 98.3 cents per gallon for propane) in determining the operating cost disclosures on the labels on their products. This is because the 1994 DOE cost figures were in effect when the 1994 ranges of comparability for storage-type water heaters were published, and those 1994 ranges are still in effect for those products.<sup>3</sup> Manufacturers of storage-type water heaters must continue to use the 1994 cost figures to calculate the estimated annual operating cost figures on their labels until the Commission publishes new ranges of comparability for storage-type water heaters. In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based

<sup>2</sup> Sections 305.11(a)(5)(i)(H)(2) and (3) of the Rule (16 CFR 305.11(a)(5)(i)(H)(2) and (3)) require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and one on operation with water heated by electricity). The labels also must disclose, below this secondary estimated annual operating cost, the fact that the estimated annual operating cost is based on the appropriate DOE energy cost figure, and must identify the year in which the cost figure was published.

<sup>3</sup> The 1994 DOE cost figures were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699). The current (1994) ranges of comparability for storage-type water heaters were published on September 23, 1994 (59 FR 48796). On August 21, 1995 (60 FR 43367), on September 16, 1996 (61 FR 48620), on August 25, 1997 (62 FR 44890), again on August 28, 1998 (63 FR 45941), and again on December 20, 1999 (64 FR 71019), the Commission announced that the 1994 ranges for storage-type water heaters would continue to remain in effect.

on the DOE cost figure for electricity in effect at that time.

**Heat Pump Water Heaters and Room Air Conditioners**

Manufacturers of heat pump water heaters and room air conditioners must continue to derive the operating cost disclosures on labels by using the 1995 National Average Representative Unit Costs for electricity (8.67 cents per kilo Watt-hour) that were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9296), and that were in effect when the current (1995) ranges of comparability for these products were published.<sup>4</sup> Manufacturers of heat pump water heaters and room air conditioners must continue to use the 1995 DOE cost figures to calculate the operating cost disclosure disclosed on labels until the Commission publishes new ranges of comparability for heat pump water heaters or room air conditioners based on future annual submissions of data. In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

**Standard-Size Dishwashers**

Manufacturers of standard-size dishwashers must continue to base the required secondary operating cost disclosures on labels on the 1997 National Average Representative Unit Costs for electricity (8.31 cents per kilo Watt-hour) and natural gas (61.2 cents per therm) that were published by DOE on November 18, 1996 (61 FR 58679), and by the Commission on February 5, 1997 (62 FR 5316), and that were in effect when the 1997 ranges of comparability for these products were published.<sup>5</sup> In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

<sup>4</sup> The current (1995) ranges of comparability for heat pump water heaters were published on August 21, 1995 (60 FR 43367). The current (1995) ranges for room air conditioners were published on November 13, 1995 (60 FR 56945). On September 16, 1996 (61 FR 48620), again on August 25, 1997 (62 FR 44890), again on August 28, 1998 (63 FR 45941), and again on December 20, 1999 (64 FR 71019), the Commission announced that the 1995 ranges for heat pump water heaters and room air conditioners would continue to remain in effect.

<sup>5</sup> The current ranges for standard-size dishwashers were published on August 25, 1997 (62 FR 44890). On August 28, 1998 (63 FR 45941), and again on December 20, 1999 (64 FR 71019), the Commission announced that the 1997 ranges for standard-size dishwashers would continue to remain in effect.

**Compact-Size Dishwashers, Clothes Washers, and Gas-Fired Instantaneous Water Heaters**

Manufacturers of compact-size dishwashers, clothes washers, and gas-fired instantaneous water heaters must continue to base the required secondary operating cost disclosures on labels on the 1999 National Average Representative Unit Costs for electricity (8.22 cents per kilo Watt-hour), natural gas (68.8 cents per therm), and propane (77 cents per therm) that were published by DOE on January 5, 1999 (64 FR 487), and by the Commission on February 17, 1999 (64 FR 7783), and that were in effect when the 1999 ranges of comparability for these products were published.<sup>6</sup> In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

**Refrigerators, Refrigerator-Freezers, and Freezers**

Manufacturers of refrigerators, refrigerator-freezers, and freezers must continue to derive the operating cost disclosures on labels by using the 1998 National Average Representative Unit Costs (8.42 cents per kilo Watt-hour for electricity, 61.9 cents per therm for natural gas, 95 cents per gallon for No. 2 heating oil, and 95 cents per gallon for propane) that were published by DOE on December 8, 1997 (62 FR 64574), and by the Commission on December 29, 1997 (62 FR 67560), and that were in effect when the current (1998) ranges of comparability for these products were published.<sup>7</sup> In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

**For Operating Cost Information Relating to Central Air Conditioners and Heat Pumps Disclosed on Fact Sheets and in Industry Directories**

In the 2000 notice announcing whether there will be new ranges of comparability for central air conditioners and heat pumps, the Commission also will announce that operating cost disclosures for these products on fact sheets and in industry

<sup>6</sup> The current ranges of comparability for clothes washers were published on June 17, 1999 (64 FR 32403). The current ranges for compact-size dishwashers and gas-fired instantaneous water heaters were published on December 20, 1999 (64 FR 71019).

<sup>7</sup> The current (1998) ranges for refrigerators, refrigerator-freezers, and freezers were published on December 2, 1998 (63 FR 66428).

directories must be based on the 2000 DOE cost figure for electricity beginning on the effective date of that notice.

**For Operating Cost Representations Respecting Covered Products in Catalogs**

Operating cost representations in catalogs that are drafted and printed while the 2000 cost figures are in effect must be derived using the 2000 energy costs beginning July 17, 2000.

**For Operating Cost Representations Respecting Products Covered by EPCA but not by the Commission's Rule**

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 2000 DOE

energy costs in all operating cost representations beginning July 17, 2000.

*Regulatory Flexibility Act*

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a “significant economic impact on a substantial number of small entities” (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

**PART 305—[AMENDED]**

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 continues to read:

**Authority:** 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

**§ 305.9 Representative average unit energy costs.**

(a) Table 1 to this paragraph contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2000)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu <sup>1</sup>
Electricity .....	8.03¢/kWh <sup>2,3</sup> .....	\$0.0803/kWh .....	\$23.53
Natural Gas .....	68.8¢/therm <sup>4</sup> or \$7.07/MCF <sup>5,6</sup> .....	\$0.0000688/Btu .....	6.88
No. 2 heating oil .....	\$1.09/gallon <sup>7</sup> .....	\$0.0000786/Btu .....	7.86
Propane .....	\$.92/gallon <sup>8</sup> .....	\$0.0001007/Btu .....	10.07
Kerosene .....	\$1.14/gallon <sup>9</sup> .....	\$0.0000844/Btu .....	8.44

<sup>1</sup> Btu stands for British thermal unit.

<sup>2</sup> kWh stands for kiloWatt hour.

<sup>3</sup> 1 kWh=3,412 Btu.

<sup>4</sup> 1 therm=100,000 Btu. Natural gas prices include taxes.

<sup>5</sup> MCF stands for 1,000 cubic feet.

<sup>6</sup> For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,027 Btu.

<sup>7</sup> For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.

<sup>8</sup> For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.

<sup>9</sup> For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

\* \* \* \* \*

Donald S. Clark,  
Secretary.

[FR Doc. 00–9527 Filed 4–14–00; 8:45 am]

BILLING CODE 6750–01–M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 330 and 385**

[Docket No. RM99–5–000; Order No. 639]

**Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf; Final Rule**

Issued April 10, 2000.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing regulations under the Outer Continental Shelf Lands Act (OCSLA)<sup>1</sup> to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS). The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. The final rule, by rendering offshore transactions transparent, should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting

in greater efficiencies in this marketplace.

**EFFECTIVE DATE:** The rule is effective May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marc Poole, Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426, (202) 208–0482; Gordon Wagner, Office of the General Counsel, 888 First Street, NE. Washington, DC. 20426 (202) 219–0122

**SUPPLEMENTARY INFORMATION:** Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

**I. Introduction**

The Federal Energy Regulatory Commission (Commission) is issuing regulations under the Outer Continental Shelf Lands Act (OCSLA)<sup>1a</sup> to ensure that natural gas is transported on an open and nondiscriminatory basis

<sup>1</sup> 43 U.S.C. 1301–1356.

<sup>1a</sup> 43 U.S.C. 1301–1356.

through pipeline facilities located on the Outer Continental Shelf (OCS).<sup>2</sup> The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA and will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The final rule, by rendering offshore transactions transparent, should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting in greater efficiencies in this marketplace. The regulations adopted by this final rule do not eliminate or modify any existing regulations or Commission policies relating to the regulation of offshore facilities pursuant to the Commission's authority under the Natural Gas Act (NGA).<sup>3</sup>

## II. Background

On June 30, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR),<sup>4</sup> in which we proposed requiring all entities that move natural gas on or across the OCS to submit certain information regarding their affiliations, rates, and conditions of service. We explained that a uniform regulatory reporting regime would permit the Commission and interested persons to ensure adherence to the OCSLA's nondiscrimination and open access mandates.

After review of the comments<sup>5</sup> and further consideration, we believe implementing new OCSLA reporting requirements, similar to certain existing NGA reporting requirements, will realize the aims stated in the NOPR of eliminating distortions in the offshore marketplace and encouraging continued

investment in the development of OCS resources.

## III. Discussion

### A. Rationale for the Rule

As discussed in the NOPR, offshore natural gas, predominately gas located in the Gulf of Mexico, has come to play an increasingly important role as a secure domestic source of clean-burning fuel supplies. We observed that the greater level of OCS activity in recent years had prompted a greater interest in the importance of the Commission's responsibility under the OCSLA to ensure a competitive market for gas pipeline services on the OCS, along with closer attention to the applicability of our NGA regulation to activities offshore. This attention has focused concern on the impact that the multiple, independent, and partially overlapping regulatory regimes at play offshore have on the competitive market.

In the NOPR, we noted that although all OCS gas service providers are subject to the OCSLA, only a subset thereof are also subject to the NGA, presenting potential competitive inequities that could be mitigated if all offshore facilities were subject to more uniform regulatory requirements. Currently, offshore service providers subject to the NGA, by virtue of compliance with our NGA regulations, are likely to be operating in full accord with the OCSLA; however, we have no assurance that offshore providers out of our NGA oversight also adhere to the OCSLA's open access and nondiscrimination mandates. Under the OCSLA reporting requirements promulgated by this rule, offshore service providers will report information similar to that now reported under the NGA, thereby bringing a similar transactional transparency to virtually all activities that take place on the OCS. This should moderate the distortion now present due to separate sets of OCS service providers being subject to separate regulatory regimes and promote policy goals of both the OCSLA and NGA. Making information regarding conditions of service available to OCS shippers will enable them to make informed and improved transportation arrangements; will enable OCS service providers to make better investment decisions; and will allow shippers, competitors, and the Commission to monitor the OCS for instances of discrimination and the exercise of market power. These benefits are unavailable without the transactional transparency provided by the OCSLA reporting requirements put in place by this rule. Making information publicly available that has

heretofore been largely inaccessible should enhance competitive options for offshore producers and onshore purchasers of natural gas, promote a more efficient marketplace, and encourage the continued exploration and development of offshore resources.

### 1. Comments

Independent Petroleum Association of America (IPAA),<sup>6</sup> Natural Gas Supply Association (NGSA),<sup>7</sup> and OCS Producers<sup>8</sup> agree with the Commission's view that while the policy objectives of the OCSLA and NGA are different, they are complementary, and not mutually exclusive. NGSA stresses that the NGA, unlike the OCSLA, allows the Commission to undertake cost-based ratemaking to ensure that transportation rates remain just and reasonable. Thus, IPAA, NGSA and OCS Producers urge the Commission to continue to exercise dual regulatory authority over facilities subject to both statutes.<sup>9</sup>

Commenters note that since enactment of the OCSLA in 1953, the Commission has only infrequently invoked its OCSLA authority to address issues concerning gas or oil activities

<sup>6</sup> IPAA is composed, generally, of smaller producers and shippers.

<sup>7</sup> NGSA is composed of integrated and independent gas producers and marketers.

<sup>8</sup> OCS Producers is composed of the following large and mid-sized offshore producers: Amerada Hess Corporation; Amoco Energy Trading Corporation; Chevron U.S.A. Inc.; Conoco Inc.; Marathon Oil Company; Mobil Exploration and Producing U.S., Inc.; OXY USA Inc.; Phillips Petroleum Company; Shell Offshore Inc.; Texaco Exploration and Production Inc.; and Union Pacific Resources Company.

<sup>9</sup> NGSA also argues that conditions be placed on abandonments of offshore NGA-jurisdictional facilities and services to preclude "a fly-up in the cost of transporting OCS supplies that could cause the premature abandonment of OCS projects in mid-production cycle." NGSA's August 27, 1999 Comments at 4-5. In a similar vein, OCS Producers request clarification that the Commission will not change its traditional exercise of NGA jurisdiction offshore. On the other hand, El Paso Energy Corporation (El Paso) argues that all offshore facilities should be deemed gathering, and thereby exempt from the NGA, an outcome that would eliminate the dual burden of complying with the OCSLA and NGA. Issues relating to the regulatory status of particular offshore facilities under the NGA are beyond the scope of this rulemaking proceeding. Here, we restrict our considerations to how to best carry out our regulatory mandate under the OCSLA. Such issues continue to be addressed by the Commission on a case-specific basis; see e.g., the decisions in *Sea Robin Pipeline Company (Sea Robin)*, 71 FERC ¶ 61,351 (1995), *reh'g denied*, 75 FERC ¶ 61,332 (1996), *vacated and remanded*, *Sea Robin v. FERC*, 127 F.3d 365 (5th Cir. 1997), *order on remand*, 87 FERC ¶ 61,384 (1999), *reh'g pending*. Accordingly, while we do discuss whether certain OCS facilities are subject to the OCSLA, we do not reach the question of the jurisdictional status of any offshore facilities under the NGA.

<sup>2</sup> The OCS is defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters \* \* \* and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a). See also 43 U.S.C. 1301(a)(1), defining "lands beneath navigable waters" as "all lands within the boundaries of each of the respective States."

<sup>3</sup> 15 U.S.C. 717

<sup>4</sup> Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf, Notice of Proposed Rulemaking, 64 FR 37718 (July 13, 1999), FERC Stats. & Regs. ¶ 32,542 (1999).

<sup>5</sup> A list of commenters appears in the appendix to this order.

offshore.<sup>10</sup> To date, to regulate offshore activity, the Commission has relied almost exclusively on its NGA jurisdiction over gas and its Interstate Commerce Act (ICA)<sup>11</sup> jurisdiction over oil. However, these statutes cover significantly less than the full range of offshore facilities and services. The NGA excludes natural gas facilities engaged primarily in production or gathering (roughly half of all the Gulf of Mexico offshore facilities, generally smaller lines).<sup>12</sup> The ICA does not apply to oil pipelines transporting oil solely on or across the OCS.<sup>13</sup> In contrast, offshore, the OCSLA's coverage is inclusive.<sup>14</sup>

Generally, interstate gas pipeline companies and their affiliated gatherers assume the absence of a history of vigorous enforcement under the OCSLA demonstrates that the Commission's practice of relying on the NGA has been satisfactory in ensuring adherence to regulatory practices and goals. In view of this, Brooklyn Union Gas Company (Brooklyn Union), El Paso, Duke Energy Field Services, Inc. (Duke), Dynergy

<sup>10</sup> Since 1992, the Commission has exercised jurisdiction under the OCSLA in one oil case, Bonito Pipe Line Company (Bonito), 61 FERC ¶ (1992), *aff'd sub nom.*, *Shell Oil Company v. FERC* (Shell Oil), 47 F.3d 1186 (D.C. Cir. 1995). In a current gas proceeding, Murphy Exploration & Production Company, 81 FERC ¶ 61,148 (1997), the Commission has invoked its OCSLA authority in response to a complaint alleging discriminatory rate treatment; final action in that proceeding is pending.

<sup>11</sup> Jurisdiction over the transportation of oil in interstate commerce by pipeline was transferred from the Interstate Commerce Commission to the Commission on October 1, 1977. See Department of Energy Organization Act, Pub. L. 95-91, section 402(b), 91 Stat. 565, 584 (1977), *codified at* 42 U.S.C. 7172(b) (1988) (repealed 1994), *recodified as amended at* 49 U.S.C. 60502.

<sup>12</sup> NGA section (1)(b) states the Act "shall not apply to \* \* \* the facilities used for \* \* \* the production or gathering of natural gas."

<sup>13</sup> See Bonito, 61 FERC ¶ 61,050 at 61,221 (1992), *aff'd sub nom.* Shell Oil, 47 F.3d 1186 (D.C. Cir. 1995) and Oxy Pipeline, Inc. (Oxy), 61 FERC ¶ 61,051 (1992). In the Bonito and Oxy cases, the Commission affirmed the OCSLA nondiscrimination provisions apply to OCS oil lines.

<sup>14</sup> See note 2. Read broadly, the OCSLA reaches across state waters to shore, since the statute's authorization extends to onshore facilities used to support OCS gas or oil production, with production including the transfer of gas or oil to shore. See 43 U.S.C. 1331(l) and (m), defining, respectively, development and production. OCSLA section 1331(m) and (q) define OCS "production" to include the "transfer of minerals to shore," with gas included within the term "minerals." In Order No. 509-A, we interpreted the scope of the OCSLA's "on or across" the OCS N to include "the seaward movement of gas from either an onshore location or an offshore location to any point on the OCS. 54 FR 8301 (Feb. 28, 1989), FERC Stats. & Regs. ¶ 30,848 at 31,341 (1989). As defined by the OCSLA, the OCS does not include either lands covered by tidal waters up to three miles from the coast of a state or lands covered by nontidal waters within the boundaries of a state. 43 U.S.C. 1331(a).

Midstream Services, Limited Partnership (Dynergy), Interstate Natural Gas Association of America (INGAA), Leviathan Gas Pipeline Partners, LP (Leviathan), Tejas Offshore Pipeline, LLC (Tejas), and Williams Companies, Inc. (Williams) conclude the NOPR's proposal to employ the OCSLA as a means to monitor offshore gas service providers is unnecessary. OCS Producers agree and expect the proposed rule to inhibit offshore gas development.

El Paso and Williams contend the proposed rule does not address the competitive disadvantages faced by offshore NGA-jurisdictional pipelines in that NGA pipelines are subject to more stringent regulation than NGA-exempt facilities (e.g., NGA pipelines require prior Commission authorization to construct, modify, or abandon facilities or services) and are thus unable to compete effectively with OCS NGA-exempt service providers.

Duke and OCS Producers maintain that absent evidence of need for the proposed rule, promulgation as a final rule would constitute legal error<sup>17</sup> and assert that any benefits of the rule would be outweighed by the burdens it would impose. Leviathan contends it would be arbitrary and capricious for the Commission to enact OCSLA regulations without consulting with the Department of Energy, providing for a full hearing on the proposed regulations, and taking into account the conservation and prevention of waste of OCS resources.<sup>18</sup> Commenters stress that continued reliance on the NGA, in conjunction with the Commission's recently revised complaint procedures,<sup>19</sup> should be adequate to ensure open and nondiscriminatory access to OCS facilities.

Instead of acting under the OCSLA, El Paso suggests the Commission modify

<sup>17</sup> Citing 5 U.S.C. 557 and 706(E) at 17, n. 24.

<sup>18</sup> Leviathan cites 43 U.S.C. 1334(e), which states, "oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste."

<sup>19</sup> 18 CFR 385.206. The Commission's procedures for responding to allegations of improper action or inaction were revised and expanded by a recent final rule, Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), FERC Stat. & Regs. ¶ 31,071 (1999), 86 FERC ¶ 61,324 (1999), *order on reh'g and clarification*, Order No. 602-A, 64 FR 43600 Aug. 11, 1999), FERC Stats. & Regs. ¶ 31,076 (1999), 88 FERC ¶ 61,114 (1999), *order on reh'g*, Order No. 602-B, 64 FR 53595 (Oct. 8, 1999) FERC Stats. & Regs. ¶ 32,545 (1999), 88 FERC ¶ 61,249 (1999).

its NGA regulations and policies relating to offshore facilities to make them less burdensome and more market responsive. In particular, El Paso would have the Commission issue blanket certificate authorization for natural gas companies to construct and abandon facilities offshore and permit NGA-jurisdictional companies to negotiate terms and conditions of service and charge market rates for transportation on the OCS.

## 2. Commission Response

In two Notices of Inquiry issued in previous proceedings initiated in 1995<sup>20</sup> and 1998,<sup>21</sup> we sought comments on whether we might declare all offshore facilities NGA-exempt gathering facilities and exercise jurisdiction exclusively under the OCSLA. That option was not put forth in our NOPR in this proceeding. Rather, the 1999 NOPR asked whether requiring all OCS gas service providers to report information about their operations would be an effective means to enforce our regulatory mandates under the OCSLA, NGA, and Natural Gas Policy Act (NGPA).<sup>22</sup> However, the comments in response to the NOPR include a repetition of arguments presented in response to the prior Notices of Inquiry, urging the Commission to either declare all offshore facilities gathering or reaffirm that offshore transmission facilities are properly functionalized. We do not reach the merits of such arguments in this rulemaking. Those comments contemplate revisions to the primary function test used to determine NGA jurisdiction over offshore facilities.<sup>23</sup> Here, our concern is limited

<sup>20</sup> The 1995 Notice of Inquiry (NOI) led to a 1996 Policy Statement that established a presumption that facilities located in deep water of 200 meters or more were engaged in production or gathering. Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), *reh'g dismissed*, 75 FERC ¶ 61,291 (1996).

<sup>21</sup> Alternative Methods for Regulating Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf, 83 FERC ¶ 61,235 (1998).

<sup>22</sup> 15 U.S.C. 3301-3432. Section 311 of the NGPA addresses transportation by or on behalf of intrastate pipelines and local distribution companies, which in practice restricts the section's coverage to state waters. The OCSLA covers all non-state waters and the NGA covers all waters.

<sup>23</sup> The "primary function" test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983), which took into consideration the following factors as relevant: (1) the length and diameter of the pipeline, (2) the extension of the facility beyond the central point in the field, (3) the pipelines' geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The primary function test has been found by the Commission to

to the question of how best to harmonize our separate statutory responsibilities.

In the NOPR, we proposed that NGA-jurisdictional pipeline companies transporting gas across the OCS comply with both NGA and OCSLA reporting requirements. We stated our expectation that for NGA-jurisdictional companies, the additional OCSLA report would impose only a modest additional burden, because under existing NGA regulations, gas companies already submit the bulk of the information specified in the new OCSLA regulations. Indeed, in light of revisions to our NGA reporting requirements,<sup>24</sup> enacted subsequent to the OCSLA NOPR, we believe that the information that NGA-regulated companies are required to provide will prove sufficient to monitor conformity with the OCSLA's open access and nondiscrimination mandates. We anticipate that the submission of the information required under the NGA,

be applicable to both onshore and offshore facilities, as modified as applied to offshore facilities in Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990). The criteria set out in Farmland were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the NGPA.

<sup>24</sup> Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091 (2000), 90 FERC ¶ 61,109 (2000) (Final Rule). This recent rule is intended, in part, to improve reporting requirements to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination—a goal shared in common with our efforts here with respect to the OCSLA. Specifically, Order No. 637 requires that, for firm service under part 284, pipelines post on their web site contemporaneously with the execution of the contract: The names of the parties to the contract; an identification number for each shipper; the contract number for the shipper receiving service and for the releasing shipper; the rate charged under each contract and the maximum rate, if applicable; the duration of the contract; the receipt and delivery points and zones or segments covered by the contract, as well as the common transaction point codes; the contract quantity, or volumetric quantity under a volumetric release and special details pertaining to a pipeline transportation contract (such as requirements for volume commitments to obtain discounts under a discounted transportation contract); and any affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper. For interruptible transportation, pipelines must post on their web site daily: The name of the shipper; a shipper identification number, the rate charged and maximum rate, if applicable; the receipt and delivery points and zones or segments over which the shipper is entitled to nominate gas, as well as the common transaction point codes; the quantity of gas the shipper is entitled to nominate; special details pertaining to a pipeline transportation contract; and any affiliate relationship between the shipper and the pipeline. See 18 CFR § 284.13(b).

will provide a data base adequate to ensure effective enforcement of the OCSLA's provisions. Therefore, we will revise the proposed OCSLA reporting exemptions, adding a new § 330.3(a)(4), to specify that facilities and services of OCS gas service providers that are regulated by the Commission under the NGA need not submit an OCSLA report.<sup>25</sup> However, if an NGA-regulated company's system includes OCS facilities that are not subject to the NGA, e.g., gathering and production lines, the company must submit an OCSLA report covering its non-NGA facilities.

El Paso and Williams are concerned that offshore, NGA-jurisdictional pipelines are disadvantaged in competing against NGA-exempt lines, and assert it is more burdensome to operate under NGA jurisdiction than under the OCSLA. The existing difference between NGA and OCSLA regulation should be diminished by this rule's new reporting requirements. NGA-exempt OCS operators, for the first time, will have to present their affiliations, rates and conditions of service for public scrutiny, similar to NGA jurisdictional pipelines. In any event, Congress has explicitly charged the Commission with curbing the exercise of monopoly power in the natural gas industry and has established separate statutes to do so.

Commenters argue the lack of past reliance on the OCSLA demonstrates there is little, if any, need for the new reporting regulations. Although periodically referenced as an enforcement option, in practice we have had few occasions to employ our authority under the OCSLA. Thus, we recognize that based solely on past practice, there may appear to be little call for further exercise of our OCSLA authority. However, as the Producer Coalition observes, "the argument that reporting requirements are not needed because there have been only a handful of OCSLA complaint misses the point" which is that "shippers do not know whether they are victims of discrimination or not. There simply is not enough information available to make an evaluation. Without transactional information, it is very difficult for a shipper to assemble a

<sup>25</sup> We treat the OCSLA, NGA, and NGPA as independent grants of statutory authority that "must be applied reciprocally in furtherance of their individual regulatory purposes." *Continental Oil Company v. FPC*, 370 F.2d 57, 66–67 (5th Cir. 1966). Thus, to the extent it appears the information submitted under the NGA is insufficient to enable enforcement of the OCSLA, we would be inclined to revisit the OCSLA reporting exemption for NGA compliant companies.

complaint."<sup>26</sup> Though OCSLA enforcement actions may have largely lain dormant because shippers and potential shippers lack information necessary to know whether they may be subject to discrimination, or because offshore NGA-exempt facilities were far less extensive and important than they have become within the last decade, we expect this rule to gather information adequate to enable effective oversight and enforcement of the provisions of the OCSLA.<sup>27</sup>

Further, we may have placed undue reliance solely on the NGA to deter discriminatory practices offshore. Thus, we are acting now in part in response to the ruling in *Sea Robin*, in which the court directed the Commission to reconsider the manner in which it applied its primary function test to *Sea Robin*'s predominately offshore system. Informed by the court's discussion, in our order on remand we found that a significant portion of *Sea Robin*'s system was engaged in NGA-exempt gathering.<sup>28</sup> Given that *Sea Robin*'s entire system had been regulated under the NGA since its inception 30 years ago, and that some of the facilities found to be gathering include large lines, it is conceivable that this decision may result in additional existing offshore NGA transmission facilities being reclassified as gathering.<sup>29</sup> Although reclassified facilities will no longer be subject to NGA reporting requirements, and shippers using such facilities will no longer enjoy the formal protections against the exercise of market power afforded by the NGA, such facilities can be expected to be subject to the OCSLA reporting requirements introduced with this rule, and as a result, shippers formerly dependent on the transparency of the NGA will have an alternative and newfound assurance that they will

<sup>26</sup> Produce Coalition's Discussion Points for Meeting on OCS Pipeline Reporting Requirements at 1 (Nov. 5, 1999).

<sup>27</sup> In Order No. 491, Interpretative Rule, 43 FERC ¶ 61,006 at 61,030 (1988), we observed that "there has been little need by potential shippers to invoke the statutory, nondiscriminatory access provisions of the OCSLA" in part because "pipelines were usually the purchasers of offshore reserves and thus were the primary shippers of gas. Since pipelines could usually secure transportation for their gas supplies, open access was seldom an issue." The order contains a brief historical overview of offshore operations and explains the need to issue an Interpretative Rule addressing the OCSLA's open access provisions in view of changes brought about following the voluntary open access provisions instituted by Order No. 436.

<sup>28</sup> 87 FERC ¶ 61,384 (1999), *reh'g pending*.

<sup>29</sup> We have observed that if *Sea Robin*, as "one of the largest transporters of natural gas produced on the OCS \* \* \* is found to be a gathering system, then it is likely that other [NGA-jurisdictional] pipelines on the OCS would also be found to have that status." 71 FERC ¶ 61,351 at 62,404.

receive service on a transparent open access and nondiscriminatory basis.

In view of this potential for facilities' reclassification, and the importance of the OCS as a source of domestic gas, we find it prudent to prepare to provide protections for shippers under the OCSLA, and absent information regarding affiliations, rates, and conditions of service applicable to OCS transactions, neither the Commission nor others can gauge whether NGA-exempt OCS service providers are operating on an open and nondiscriminatory basis. Without such information at hand, practices prohibited by the OCSLA might only come to light when a prospective shipper was denied service and objected to the denial by filing a complaint with the Commission. We conclude that information regarding the business practices of NGA-exempt OCS gas service providers is necessary for the Commission to fulfill its responsibilities under the OCSLA. Given this need, we cannot agree with Duke's and OCS Producers' contention that there is no rationale for imposing a reporting requirement on OCS service providers. We believe our reasoning and the record support the need for new regulations to establish a means to ensure OCS service providers abide by the provisions of the OCSLA.

We are unpersuaded by Duke's and OCS Producers' assertion that the benefits to be derived by providing for public disclosure of OCS terms and conditions of service will not outweigh the burden of supplying such information. We have discussed our rationale for imposing the new requirements above. As discussed below, we seek to moderate the impact of these requirements by providing exemptions to OCS service providers that appear to have little to gain by engaging in discriminatory practices. We anticipate those OCS service providers that are subject to the reporting requirement should be able to produce the required documentation without extensive in-house auditing, analysis, or accounting. We expect the prospect of reporting will invigorate efforts to comply with OCSLA requirements. In addition, the OCS data base that this rule will establish will assist potential complainants to identify issues and articulate allegations. Recent revisions to our complaint procedures, designed to permit the Commission to process complaints in a more timely manner,<sup>30</sup> ask complainants to present an initial submission containing specific information. Without benefit of the OCS

data base, potential complainants face a greater burden in obtaining the specific information necessary to present a complaint.

In the NOPR, we estimated that record keeping and reporting will require 16 hours per respondent per year and an annual expense of \$800.<sup>31</sup> As discussed below, service providers expressed the apprehension that frequent changes in their affiliations or operations could cause actual costs to run much higher. In response, we have restricted the number of possible reporting updates to four per year, and in recalculating the burden, we assume every reporting entity will file every quarter. Although this doubles the data collection burden estimated in the NOPR, it still imposes a very modest cost on those service providers that are required to file.

Leviathan's assertion that we are establishing OCSLA reporting requirements without providing interested parties the opportunity for a full hearing is inconsistent with the actions taken in this rulemaking proceeding. In accordance with section 553 of the Administrative Procedure Act (APA),<sup>32</sup> a general notice of this proposed rulemaking was published in the **Federal Register**.<sup>33</sup> That notice described the proposed changes to our regulations and invited interested persons to comment on the NOPR. We have considered the comments received, and respond to them in describing the basis and purpose of the new regulations. Provisions for an evidentiary, adversary, or adjudicatory hearing are inapplicable to a rulemaking proceeding.<sup>34</sup> While the Commission may exercise its discretion to hold such hearings, or to institute a conference, or to seek additional information in some other manner, we see no need to do so in this case. All interested parties have had adequate opportunity to be heard in this rulemaking proceeding, as they did in the earlier related 1995 and 1998 NOI proceedings. We find the written record in this proceeding provides a sufficient basis for us to reach final determinations.

<sup>31</sup> 64 FR 37718 at 37724. We change the figures in this final rule to reflect a reduction in the number of service providers expected to file OCSLA, due to the exemption for NGA-regulated gas companies, and an increase in estimated annual hours and expense, due to doubling (from two to four) the number of responses expected to be filed per year.

<sup>32</sup> 5 U.S.C. 551-559.

<sup>33</sup> 64 FR 37718 (July 13, 1999).

<sup>34</sup> See *Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency*, 859 F.2d 156 (D.C. Cir. 1991) and *Willapoint Oysters, Inc. v. Ewing*, 174 F.2d 676 (9th. Cir. 1949), cert. denied, 338 U.S. 860 (1949).

Leviathan questions whether this rulemaking has satisfied the OCSLA requirement that as a condition on every OCS right of way "oil or natural gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste."<sup>35</sup> As we reach no decision in this rule regarding amounts of gas or oil transported or purchased, we do not believe this hearing and consultation requirement is triggered.<sup>36</sup> Further, we note that the Secretary of Energy provided comments in response to our 1998 NOI and expressed the concern that we take no action that might interfere with the development of resources offshore.<sup>37</sup> We have taken the concerns of the Secretary into account, both in the preparation of the NOPR and in formulating the regulations put in place by this rule. As discussed herein, we do not believe instituting a reporting regime will inhibit the expeditious development of OCS resources.

Several OCS service providers suggest that requiring a public report of their business practices will stifle their ability to individually tailor service agreements and will inhibit innovations in operations and organization, thereby discouraging offshore development. We do not expect this result because, as discussed below, we see no bar to a service provider offering different shippers different terms—provided the variation in the terms of service either reflect differences in costs incurred to provide service or reflect differences among the shippers served. Thus, we do not expect the new reporting requirements will impose constraints on OCS service providers that could inhibit the development of, or transactions across, the OCS. Rather, we expect the

<sup>35</sup> 43 U.S.C. 1334(e).

<sup>36</sup> While requiring reporting and filing reports does not impact gas flows, imposition of a remedy might—for example, prescribing that a pipeline accept gas on a pro-rata basis to effect open access—and would thereby trigger the need for consultation.

<sup>37</sup> In response to the 1998 NOI in Docket No. RM98-8-000, the Secretary of Energy submitted a letter dated February 11, 1999, encouraging evenhanded treatment and the removal of "artificial regulatory barriers which might impede private sector investment, the development of advanced technologies, and the development of competitive transportation markets in the Gulf of Mexico." See note 21.

<sup>30</sup> See note 19.

disclosure of affiliations, rates, and conditions of service will encourage continued offshore investment by ensuring shippers that offshore services are rendered on a transparent and equitable basis.

El Paso suggests that offshore the Commission apply the NGA with a lighter hand by issuing blanket construction and abandonment authorization and allowing offshore gas transporters to charge market rates and set their own conditions of service. We find insufficient evidence to conclude that this approach could assure fulfillment of our statutory obligations. The NGA directs that rates be just and reasonable, an outcome ensured by our prior approval of cost-based rates for transportation services covered by the NGA. Letting a market that may not be sufficiently competitive determine rates could not ensure this same result.

#### B. Technical Conference

##### 1. Requests To Hold a Technical Conference

Tejas and OCS Producers propose a technical conference to: Address the need for and scope and aim of the rule; air the opinions of engineers and corporate executives regarding the desirability of the new regulations; provide the Commission with the opportunity to become more familiar with NGA-exempt offshore operations; and examine and compare the anticipated benefits and burdens of the rule.

##### 2. Commission Response

We have considered the issues of the scope of our jurisdiction offshore and the need to alter how we exercise our regulatory authority offshore in the NOPR in this proceeding. Our consideration was informed by views presented in the prior 1995 and 1998 NOI proceedings, the OCS policy statement of 1998, and in individual pipeline decisions, most recently in *Sea Robin*. Given these several opportunities for interested parties to express views concerning the existing and proposed regulatory regime offshore, we do not believe there is a need for yet another forum for further comments. The rationale for the new OCSLA reporting requirements, along with anticipated benefits and burdens, are discussed in the NOPR and this final rule. We think our understanding of offshore operations is adequate to the task of determining what information is necessary to identify whether discriminatory practices are occurring on OCS facilities. Accordingly, we deny

the requests to institute a technical conference.

#### C. Exemptions

##### 1. Comments

Generally, OCS pipelines providing service for others—*i.e.*, pipelines subject to the new reporting requirements—advocated abolishing the proposed filing exemptions for feeder lines, single-shipper lines, and owner-shipper lines.

The Minerals Management Service (MMS) of the Department of the Interior observes that as a royalty owner in every OCS lease, if it elects to take federal gas royalties in kind (rather than in cash), it becomes a shipper on every offshore line it might use to bring gas from the leasehold to shore. MMS implies its potential shipper status should negate the single-shipper and owner-shipper exemptions. OCS Producers opposes this approach.

Tejas asks whether a pipeline can come within or fall outside of the reporting exemption depending on changes in its ownership interests or shippers. Tejas also asks whether a pipeline exempt from reporting would lose that exemption if it accepted gas volumes from a third party on an interruptible basis. Tejas requests the Commission clarify that the owner-shipper pipeline exemption applies where the same parties hold different proportionate ownership interests in gas production and in the pipeline facilities used to transport that gas.

Coastal Field Services Company (Coastal) contends the Commission's existing complaint procedure is sufficient to ensure open and nondiscriminatory access on NGA-exempt OCS service providers; therefore, OCSLA reporting should not apply to these providers. Coastal requests the proposed § 330.3(a)(1)'s single-shipper reporting exemption be extended to apply where a gas service provider transports for a gas producer and for one or more of that producer's working interest owners under the same rates and conditions of service, *i.e.*, that the Commission consider all working interest owners in a particular producing field as a single entity for the purpose of the reporting exemption. Coastal also suggests that where one or more joint working interest owners are affiliated with an OCS service provider, the Commission treat transportation on that service provider's facilities as being for a single entity, and thereby exempt.

El Paso argues the reporting exemptions will result in an uneven competitive playing field and urges the proposed exemptions for feeder lines,

single-shipper lines, and owner-shipper lines be eliminated to ensure all OCS facilities receive equal treatment.

The Producer Coalition maintains that gas operations in deep water merit closer scrutiny because such projects tend to be larger than shallow water efforts, and thus present a greater barrier to entry to potential competitors. The Producer Coalition presumes that proposed § 330.3(a)(3) will exempt all deep water "gathering or feeder lines," and based on this presumption, requests the Commission limit the scope of deep water exemptions to single-shipper or owner-shipper lines.

The Producer Coalition asks the Commission to clarify that for the purposes of proposed § 330.1(b), a "facility located on the OCS" be read to include the portion of the same facility that traverses state waters until the first point of interconnection with an onshore line.

The Producer Coalition urges the Commission to clarify that production platforms will be excluded from the definition of an offshore facility in proposed § 330.1(b). NGSAA would extend this exclusion to production-related lines, services, facilities, and agreements. OCS Producers want a reporting exclusion that explicitly includes all activities involving gas extraction and collection, separation and treatment, and preparation for transportation.

As proposed, § 330.3(a)(2) provides a reporting exemption for a gas service provider "that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from the field connected to the pipeline." The Producer Coalition requests the reference to "the field" not be interpreted to confine the exclusion to a single gas producing field and urges that the Commission expand this exemption to include owner-shippers that hold interests in and gather gas from multiple fields.

The reporting exemptions of proposed § 330.3(a)(1) for a single-shipper service provider and § 330.3(a)(2) for an owner-shipper service provider hold until a second shipper or a non-owner shipper is served or "the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial." OCS Producers ask the Commission to clarify the basis upon which it may find a denial of service is justified. OCS Producers note the NOPR suggests the Commission would uphold a denial of service if a pipeline lacks available capacity, or if providing the requested

service would result in shutting in producing wells, or if the gas received is of an unacceptable quality. OCS Producers contend that denying service based on gas quality would be contrary to the result reached in *Shell Oil*.<sup>38</sup> OCS Producers also question whether the Commission might compel access by means of pro-rationing or the mandatory expansion of facilities.

OCS Producers ask if OCS service providers seeking a reporting exemption must file for such an exemption or if the Commission intends to issue blanket exemptions. If the former, OCS Producers seek assurance no filing fee will be charged; if the latter, OCS Producers request no penalty apply if the service provider is later found to be non-exempt.

Williams would eliminate the mandatory OCSLA reporting and instead have the Commission act case-by-case, requesting information from an OCS service provider only after an existing or prospective shipper seeks assurance that service is in accordance with the OCSLA's open and nondiscriminatory access requirements. Williams would require an OCS service provider to supply, in confidence, no more information than is necessary to show its practices conform with OCSLA principles.

## 2. Commission Response

*a. Reporting Exemptions for Certain Companies.* In the NOPR, we questioned whether we should contemplate any exemptions to the proposed OCSLA reporting requirements in view of the fact that we do not now have data sufficient to assemble an overview of NGA-exempt OCS transactions. After consideration of the comments, we are persuaded that it is appropriate to exempt service providers that are least able or inclined to discriminate. In the NOPR we proposed exemptions for service providers that confine their operations to moving their own gas or that of a single shipper. We adopt these exemptions, and in addition provide an exemption for NGA-regulated OCS service providers, because as noted above, we are persuaded these service providers, by conforming to our regulatory requirements under the NGA, present transactional and market information adequate to the task of identifying practices prohibited under the OCSLA. Rather than have such entities refile largely redundant information, we add § 330.3(a)(4) to the new regulations to exempt from reporting gas service providers that are

regulated by the Commission under the NGA. We do not believe any essential regulatory purpose would be promoted by having the exempt entities file OCSLA reports. If we are presented with evidence that exempt entities are abusing the reporting exemption or are indeed discriminating, we may restrict or revoke the exemptions.

Because we have not established a data base describing NGA-exempt OCS entities' facilities and services, existing and prospective OCS shippers have no means to consider or compare offers, denials, or terms of service. Therefore, we believe it would be impractical to adopt Williams' suggestion that we forego OCSLA reporting and instead only seek information from OCS service providers in response to a specific shipper's request. Under this approach, shippers and the Commission would still be faced with the same gap in information that now exists. We feel a more efficient method to encourage proper practices is to make transactional information publicly available, then use that information as a foundation to identify and correct any discrimination or access problems.

*b. Reporting Exemptions for Certain Facilities.* The OCSLA, unlike the NGA, applies to the full range of gas exploration, development, production, gathering, and transportation.<sup>39</sup> However, section 1334(f)(2) of the OCSLA does provide the Commission the option to exempt any "pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed" from the requirement that OCS transportation adhere to the competitive principles of open and nondiscriminatory access. Such "feeder line" facilities are typically owned and operated by the same entity that holds the right to produce gas from a particular field; we do not expect issues of access or discrimination to arise where the same entity owns or leases both the mineral rights and the facilities necessary to draw gas from its own reservoirs. Therefore, § 330.3(a)(3) of the new regulations exempts lines that feed into a facility where gas is first collected,

separated, dehydrated, or otherwise processed from our OCSLA reporting requirements. In addition, § 330.0(a)(1) and (2) exempt OCS service providers that serve only a single entity or its own owners. The same rationale holds as for a producer operating feeder lines on its own behalf: where a service provider carries gas only for itself or for a single customer, there is no call to compare conditions of service among multiple shippers.

The Producer Coalition argues that due to the large expense and size of deep water facilities, we should permit only the single-shipper and owner-shipper reporting exemptions, but not allow such facilities to come under the feeder-line exemption. We acknowledge that deep water projects can be orders of magnitude more costly than shallow water systems, thereby magnifying adverse impacts of anticompetitive actions. We also acknowledge that the changing technical and geographic nature of offshore exploration and production has resulted in increased drilling in deep water. Nevertheless, at this time, we find no cause to revoke the feeder-line exemption to enhance our scrutiny of deep water activities. However, we may reconsider this position if we are presented with evidence that our regulatory oversight is inadequate to ensure that deep water services conform with the OCSLA's open and nondiscriminatory access requirements.

OCS Producers and the Producer Coalition request we broaden the § 330.3(a)(2) "feeder line" exemption to include platforms and production-related facilities and services. The statutory language of the OCSLA indicates feeder lines are upstream of a point where gas is first collected, separated, dehydrated, or processed. This point, as a general proposition, will be on a production platform. But this will not always be the case; consequently, rather than adopt a bright line, but over-broad, definition, we believe that identifying a point where gas is first collected, separated, dehydrated, or processed and partitioning upstream from downstream facilities, is best done after examining the facts and circumstances of each specific case. While we expect exempt upstream feeder line facilities will generally be found within production fields, we cannot make a generic determination that all platforms and production-related facilities are, in accordance with OCSLA section 1334(f)(2), situated upstream of a point where gas is first collected, separated, dehydrated, or processed. Therefore, we will deny the requests for a blanket

<sup>39</sup> Section 1(b) of the NGA states: "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

<sup>38</sup> 47 F.3d 1186 (D.C. Cir. 1995).

extension of the § 330.3(a)(2) feeder line exemption.

MMS urges that we conform our § 330.3(a)(2) feeder line exemption to MMS' definition of gathering facilities.<sup>40</sup> We believe it would be premature to limit our discretion under OCSLA section 1334(f)(2) by tethering it to the MMS definition.<sup>41</sup> Our preference, as noted above, is to consider purported feeder line facilities on a case-by-case basis to determine the point at which gas is first collected, separated, dehydrated, or otherwise processed.

The federal government is a royalty interest owner in every OCS lease, and pursuant to the OCSLA, provides MMS the option of collecting its royalty share in kind or in value.<sup>42</sup> Almost all royalty payments are currently rendered in value, *i.e.*, in cash. However, MMS notes it is undertaking a pilot program whereby royalties due the United States can be paid in kind in gas.<sup>43</sup> MMS "requests that a final regulation specifically apply the reporting requirement whenever the Federal government's royalty gas could be moved along with only one other producer's gas."<sup>44</sup> Were MMS to alter its current practice to take royalties in kind as gas, and ship such gas from its source of production to shore, because royalty payments apply to all OCS leaseholds, MMS could become a second shipper on every line used to move gas associated with federal royalties. This would effectively end the reporting exemptions, since MMS could be added as a shipper to pipelines that would otherwise be dedicated exclusively to single-shipper or owner-shipper transportation.

As discussed, we believe those OCS service providers that we propose to

exempt have little apparent motive to deny access or discriminate. Thus, we hesitate to compel these service providers to report under § 330.2. However, in the event MMS moves beyond its present royalty-in-kind pilot program and begins to collect a significant portion of royalty payments as gas volumes, we may be inclined to revisit the applicability of the reporting exemptions. We note that as is, under its own authority, MMS can compel OCS service providers to disclose information relevant to MMS. Therefore, for now, we find it appropriate to retain the reporting exemptions.

If requested, we will consider whether a particular OCS service provider qualifies for a certain reporting exemption, but do not plan to initiate a blanket evaluation of every OCS entity. An entity requesting the Commission evaluate its status will be subject to the declaratory order fee.<sup>45</sup> Given the limited nature of the reporting exemptions, we expect OCSLA reports to be filed for the bulk of the OCS facilities that are located between production platforms and shore.<sup>46</sup> Like the production/gathering and Hinshaw exemptions of NGA sections 1(b) and (c), respectively, we expect service providers to exercise good faith in determinations as to whether their facilities and operations qualify for an OCSLA reporting exemption. The Commission, or any other person, may challenge a non-reporting service provider's exemption. An entity found to have erroneously presumed itself exempt can cure its error by filing in accordance with the reporting requirements established herein.

OCS Producers seek assurance we will not penalize a service provider for not reporting if that service provider has not reported because it believes it qualifies for a reporting exemption. As noted, service providers are to make a good faith effort to evaluate whether their facilities and operations come under one of the exemptions. If a service provider elects not to report and is able to present a reasonable case for its claim to a reporting exemption, that we nevertheless disagree with, we would not expect recompense beyond compelling the service provider to commence and continue timely filing of OCSLA reports. However, if we find a knowing and willful effort to evade or

violate the reporting provisions, we may seek penalties as provided under OCSLA sections 1134 and 1350.

In the NOPR, we proposed granting OCS service providers newly subject to these provisions 60 days to prepare and submit an initial OCSLA report. Comments have convinced us to extend this to 90 days to alleviate constraints that might otherwise be placed on service providers, particularly those not previously reporting under the NGA, in organizing the presentation of a first filing. Proposed § 330.3(c) specified that after an initial filing, a service provider subject to reporting must submit a description of a change in affiliates, customers, rates, or terms and conditions of service within 15 days thereof. As discussed below, we will modify this and limit filings to, at most, four per year. This puts initial and updated filings on a similar timetable. Eliminating the proposed 15-day deadline should significantly reduce the reporting burden.

We clarify that if an OCS gas service provider becomes subject to reporting for the first time, it must file an initial OCSLA report within 90 days of the event that triggers the § 330.2(a) and (b) reporting requirements. It is possible a service provider may qualify for a reporting exemption, act to invalidate its exemption, then act again to requalify for an exemption (*e.g.*, a service provider may carry gas for a single customer, accept interruptible volumes from a second shipper for a limited period of time, then return to exclusively serve a sole shipper).<sup>47</sup> A service provider subject to reporting, that subsequently becomes exempt, then later loses its exemption, will again be required to submit an OCSLA report, and to do so within 90 days of the date that its exempt status ended.

Coastal proposes the single-shipper exemption be extended so as to treat a gas producer made up of multiple working interest owners as a single shipper where transportation is provided to the gas producer and its working interest affiliates under identical rates and conditions of service. We find no fault with the end result that Coastal posits: Multiple shippers served the same. However, without a public declaration of rates and conditions of service, there is no way to verify that the rates and terms under which the gas producer receives service are in fact identical to the rates and terms under

<sup>40</sup> MMS regulations state: "Gathering means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases respectively." 30 CFR 206.151.

<sup>41</sup> MMS has considered, but has not enacted, revisions to its definition of gathering. *See, e.g.*, MMS' Amendments to Gas Valuation Regulations for Federal Leases NOPR, 60 FR 56007 (Nov. 6, 1995) and its Notice Withdrawing Proposed Rulemaking and Requesting Comments on Supplemental Information, 62 FR 19536 (Apr. 22, 1997).

<sup>42</sup> MMS acts under OCSLA section 1353(a)(1), which, with minor exceptions, provides for all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease to be paid in oil or gas.

<sup>43</sup> See Federal Oil and Gas Royalty-in-Kind Pilot Programs, Notice of Intent, 64 FR 37809 (July 13, 1999), stating MMS' intent to employ several pilot programs to take the government's royalty share of production in kind from federal oil and gas leases.

<sup>44</sup> MMS' Comments at 2-3 (August 27, 1999).

<sup>45</sup> See 19 CFR 381.302.

<sup>46</sup> At this point, we are not prepared to impose a fee for Commission services associated with processing OCSLA reports. Annual charges, assessed in accordance with the provisions of § 154.402 and part 382 of the Commission's regulations, apply to NGA-regulated gas pipelines, not to pipelines subject exclusively to the OCSLA.

<sup>47</sup> We clarify that once a service provider becomes subject to the reporting requirements, even if remains so only momentarily, an OCSLA report must be filed within 90 days of the event interrupting the exemption.

which each of the various working interest owners receive service.

By way of contrast, where a service provider carries gas for one shipper, *i.e.*, one entity holds title to all gas moving in one pipe, there is no opportunity to serve other shippers under different and potentially discriminatory terms. This would be the case whether the one entity holding title to the gas is a single producer or is a single entity composed of multiple parties that together agree to obtain service under a contract between the single entity and the service provider.<sup>48</sup> Under such conditions, the § 330.3(a)(1) exemption applies, whereas under the Coastal scenario, it does not; hence we find reporting necessary to verify that multiple shippers all receive the same rates and terms of service.

Coastal also proposes a reporting exemption for a service provider that carries gas that is produced on behalf of multiple working interest owners when one (or more) of the working-interest owners is affiliated with the service provider. Coastal maintains these circumstances are the equivalent of service for a single shipper. We disagree. Where there are multiple shippers, and particularly where some are affiliated with the service provider and some are not, a service provider may find it advantageous to serve different shippers under different and potentially discriminatory terms. We expect disclosure will discourage unequal treatment; thus, we find it prudent not to expand the reporting exemptions.

We clarify that new § 330.3(a)(2), which exempts an OCS service provider shipping only its own gas, will apply as long as the same parties hold all ownership interests in both the gas produced and the pipeline moving the gas. Recognizing the operational reality that gas shipments do not always track exact working interest owners' percentages, this exemption will hold where the parties' ownership shares are disproportionate to the gas volumes flowing in the owner-shipper line.

Tejas asks if an exempt OCS service provider could offer interruptible-only transportation to various parties and remain exempt. We believe the reporting exemption should turn on the identity of the service provider and its shippers, not the type of service

provided. Regardless of whether a service provider moves gas on a firm or interruptible basis, where there are multiple shippers, the potential for differential, discriminatory treatment is present.

The Producer Coalition requests that the § 330.1(b) definition of gas service provider as, "any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS," be expanded to include not only facilities on the OCS, but facilities that reach from the OCS and across state waters to the first point of interconnection with an onshore line. At this time, we do not find it necessary to apply the OCSLA in such an expansive manner, as we anticipate our joint OCSLA-NGA jurisdiction will enable us to ensure open and nondiscriminatory transportation between the OCS and the first onshore interconnection point.<sup>49</sup> Further, states can act to regulate activities within their waters. In view of this, we will not adopt Producer Coalition's proposal.

The Producer Coalition points out that proposed § 330.3(a)(2)'s exemption for a service provider transporting only its own gas refers to "the gas produced from the field connected to the pipeline." The Producer Coalition, noting that gas can be gathered into a single line from more than a single producing field, asks that "field" be made plural. We recognize there may be circumstances where gas from a single field is carried to a pipeline by means of a lateral line that crosses the territory of an adjacent field, or where a pipeline's owners all hold working interests in more than one field along the route of a single line. We believe § 330.3(a)(2) should capture such situations, and will modify the language accordingly. However, this applies only where the working interest owners of the producing field(s) flow their gas through a single pipe, and only where all the gas in that one line is from the producing field(s) of the working-interest owners. The principle remains the same, service providers serving themselves are not expected to deny access to or discriminate against themselves.

OCS Producers request we elaborate upon the criteria to be used to decide when a service provider would be

justified in refusing a request for service and ask whether the Commission intends to make use of pro-rationing or mandatory expansion as remedies. In the NOPR, we stated a denial of service may be upheld "if the receipt of additional volumes could cause gas from producing wells to be shut in contrary to the OCSLA section 5(e) admonishment concerning conservation or the prevention of waste, or, if the content of the proposed gas stream would be incompatible with the characteristics of gas volumes currently flowing."<sup>50</sup> Until faced with specific facts and circumstances, we are not prepared to speculate what, if any, additional reasons for denial we might find acceptable. Pro-rationing, provided it can be implemented without adversely impacting ongoing development and production, remains an option. Mandatory expansion of throughput capacity, as described in section 1334(f)(B) of the OCSLA, also remains an option. However, given that the statute states that our authority to compel expansions does *not* apply to facilities in the Gulf of Mexico or Santa Barbara Channel, we do not foresee this issue arising with any frequency.

#### D. Reporting Requirements

##### 1. Comments

Numerous commenters express concern with the extent of the reporting burden that the proposed rule would impose. INGAA, El Paso, Leviathan, and Williams assert that even if all OCSLA-required information is already on file with the Commission pursuant to NGA-required submissions, the task of refileing under the OCSLA to cross-reference such information could be avoided if the proposed rule were to explicitly deem that NGA compliance fulfills the OCSLA reporting requirement. Enron Interstate Pipelines (Enron) urges an OCSLA reporting exemption be added under § 330.3 for NGA-jurisdictional pipelines.

Williams contends it is impractical to itemize a rate per particular gas pathway due to the complexity of existing

<sup>48</sup> Provided that a single entity signs a transportation agreement with a gas service provider and that that party holds title to the gas shipped, the single-shipper reporting exemption will apply. The nature of the business interest of the single entity signing the gas transportation contract is immaterial to the applicability of this exemption.

<sup>49</sup> See Murphy, 81 FERC ¶ 61,148 at 61,670-71. See also Order No. 509, 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. ¶ 30,842 at 31,274 (1988), stating: "[T]he Commission believes the condition of nondiscriminatory access established in Order Nos. 436 and 500 satisfies, in large measure, the open-access requirement in section 5(f)(1)(A) of the OCSLA. However, unlike onshore pipelines, OCS pipelines cannot voluntarily choose to not participate in the open-access program."

<sup>50</sup> 64 FR 37718 at 37722. OCS Producers contends denying service based on gas quality would conflict with the result in Shell Oil. We disagree. We rejected an OCS oil pipeline's contention that accepting a request to transport sour crude, oil with a high sulfur content, would degrade the sweet, low sulfur, oil stream carried by the pipeline. Our rejection was based on our finding that capacity was available, the pipeline was accepting sour crude from other shippers, and the additional requested volumes would not materially affect the quality of the pipeline's oil stream. This finding does not conflict with our statement that a pipeline may legitimately reject a request to accept new gas when the new volumes would be incompatible with the characteristics of the gas flowing in the line.

arrangements and routes to shore, stating "the prices and terms for transporting each of two shippers' gas streams through the same pipeline from the same point of receipt to the same point of delivery can and will differ as the result of the myriad facts and circumstances which exist over time both upstream and downstream of that pipeline."<sup>51</sup>

OCS producers and gatherers, not now subject to the NGA, state that any OCSLA filing requirement would be a new and unwelcome responsibility. OCS Producers emphasize that even after the effort of making an initial filing, the reporting burden would continue as conditions change, triggering revised filings. Duke, Dynergy, OCS Producers, and Tejas believe the proposed reporting requirement would compel the disclosure of sensitive or proprietary information. Tejas suggests the Commission permit the filing of redacted contracts in order to protect shipper confidentiality.

Duke and Leviathan state that mandatory disclosure of customer contracts will undercut OCS gatherers' efforts to tailor services to meet individual shipper's needs. Leviathan and Tejas predict that gas service providers, to avoid charges of discrimination, will offer all customers a standardized, rigid set of contract terms. OCS Producers foresee a reordering of ownership interests in order to come within the reporting exemption.

Duke believes the proposed reporting exemption for owner-shipper pipelines would afford such lines a competitive advantage over non-exempt pipelines and induce pipelines to structure ownership so as to come within the reporting exemption. Tejas and Williams anticipate single-shipper or owner-shipper lines will be inclined to avoid serving other parties to maintain their exempt status. They also anticipate—based on the Commission's suggestion that it may sustain a fully subscribed pipeline's refusal to serve additional customers in the interests of conservation and prevention of waste—that construction of larger multi-shipper lines will diminish in favor of smaller proprietary lines, since the latter, if full, may be able to refuse to serve third parties yet retain a reporting exemption.

Duke claims the proposed reporting requirements conflict with provisions of

the ICA prohibiting the release of contract information.<sup>52</sup>

Tejas and Williams ask why the reporting requirements are limited to OCS gas service providers and do not apply with equal force to OCS oil service providers.

Coastal views the proposed OCSLA filing as equivalent to an NGA tariff filing and suggests the Commission reject the rule, or alternatively, limit reporting to require that each gas service provider file a map of its system,<sup>53</sup> the name of a contact person, and an affirmation by an authorized officer that the company will not engage in discriminatory practices.

Leviathan expects its own reporting burden alone will exceed the Commission's estimate for the all reporting entities,<sup>54</sup> and anticipates OCS service providers will spend hundreds of thousands of hours and millions of dollars in contract renegotiation and litigation costs. Tejas predict its reporting burden will be 200 hours for an initial report and 1,000 hours annually for updates, on top of which it expects to bear the additional burden of defending itself against charges of discrimination. El Paso cites as an example its affiliate Tennessee Gas Pipeline Company, which during a recent 12-month period, incurred 3,077 reportable events, which could have compelled it to submit near daily updates to keep current information on file.

El Paso proposes that OCSLA filings, consistent with NGA filings, should not require updating where nonmaterial changes are made to filed contracts. Further, El Paso sees no need for an OCS gas service provider to identify affiliates that are not shippers on the OCS. OCS Producers would restrict this further and only require identifying affiliates that ship on a reporting party's pipeline.

Tejas asks for clarification regarding which event will trigger the reporting requirement: An offer to serve or a shipper's acceptance thereof? Williams notes that some existing non-NGA rate structures include escalator or adjustor

<sup>52</sup> 49 U.S.C. app. section 15(13) (1988) prohibits a common carrier from disclosing certain information.

<sup>53</sup> The Producer Coalition requests the Commission specify that submitted maps be legible and understandable. We so state our presumption. We will also require that where a service providers' system undergoes significant changes, an updated map is to be submitted.

<sup>54</sup> In the NOPR, the Commission estimates 70 parties will file twice per year, each party requiring 8 hours to prepare each submission, resulting in an annual total of 1,120 hours to prepare filings at an estimated cost of \$56,000. In response to comments, we double these estimated totals, as discussed below.

clauses and seeks clarification that, as long as the formula for determining the current rate is on file, refiling will not be required each time a new rate takes effect.

The Producer Coalition is concerned that describing affiliations, rates, and certain terms is insufficient to provide a full and accurate view of OCS transactions, because such a report may omit material conditions of service such as: Agreements regarding the construction of facilities; dedication of gas supplies, daily volumes; gas quality standards; priorities for scheduling services; imbalance provisions; and billing and payment arrangements. The Producer Coalition would eliminate the option to report rates and a limited description of the conditions of service and instead require a report that includes full contracts and all incidental and related letter agreements or amendments, to be updated each time a new contract is executed or an existing contract is modified, expires, or is canceled.

The Producer Coalition requests that gas service providers file in a form that alphabetically indexes (1) shippers by name, with the primary and secondary receipt points associated with each contract and the rate applicable to each pair of points and (2) receipt points by OCS block, with a cross-reference to the contracts and rates associated with each such point.

MMS proposes that all OCS gas service providers that do not submit contracts instead file a complete description of costs.<sup>55</sup> MMS would remove the § 330.3 reporting exemption, noting that it is a royalty owner in every OCS lease, and given that it may accept gas volumes as royalty payments, it is a potential shipper from every OCS lease. MMS observes that adopting its proposal would permit OCS lessees and affiliated providers to maintain a single set of books for their OCS transportation costs for all federal regulatory purposes.

OCS Producers opposes MMS' proposal, arguing it would be burdensome and require the disclosure of confidential producer data. Accordingly, OCS Producers urge that participation in MMS in-kind royalty payments should not be treated as shipping for a third party, so as not to undo the single-shipper and owner-shipper reporting exemptions.

Tejas asks how, mechanically, OCSLA filings will be made. OCS Producers ask whether reporting is to be submitted system-wide or line-by-line. OCS Producers also ask which party is responsible for filing when there are

<sup>51</sup> Williams' Comments at 11 (August 27, 1999).

<sup>55</sup> See MMS regulations at 30 CFR 206.157(b).

multiple owners of an OCS pipeline or when the pipeline owner is not the pipeline operator.

## 2. Commission Response

The free flow of information regarding offshore gas activities is critical to the successful creation of a competitive and efficient marketplace. Access to relevant information is necessary for shippers to make informed decisions about capacity purchases and for the Commission and shippers to monitor transactions to determine if market power is being exercised in violation of the applicable statutes. The ready availability of information will become increasingly important, both for efficient trading and for the monitoring for the exercise of market power. We believe the information specified in §§ 330.2 and 330.3(b) and (c), as modified below, is the minimum necessary to provide a meaningful overview of OCS service providers' treatment of their different shippers. Thus, we reject requests that we require either more or less information from service providers.

Concerns relating to the overlap of information submitted under the NGA and OCSLA and the inconvenience of duplicative filings are resolved by the new § 330.3(a)(4) reporting exemption for OCS service providers currently regulated by the Commission under the NGA.

Several commenters contend the total reporting burden will exceed our estimate of 1,120 hours and \$56,000 annually. In response, we will make the following changes, in order to simplify and diminish the effort required to comply with the new requirements. As proposed, § 330.2(a)(6) directs a service provider to list all its affiliates. Such affiliates, commenters note, may include companies engaged in activities unrelated to the natural gas industry. We acknowledge there are affiliates that play no part in OCS operations and agree there is no practical need to name such entities. OCS Producers and El Paso suggest restricting named affiliates to those that ship on a service provider's facilities; El Paso believes this more limited disclosure to be sufficient to identify anticompetitive practices. Such a restriction calls for a very narrow, or very charitable, interpretation of a service provider's self-interest. We can, for example, envision circumstances in which an OCS service provider might be inclined to act to the advantage of an upstream non-shipper producer affiliate or an onshore non-shipper processor affiliate. In view of this, we will qualify § 330.2(a)(6): only affiliates engaged in the exploration, development, production, processing, transportation,

marketing, consumption, or sale of natural gas need be identified in the OCSLA report.<sup>56</sup>

Comments tend to identify ongoing compliance filings, rather than the initial OCSLA report, as a source of difficulty. In response, we will expand the time provided for filing an initial report and for filing updates and will limit the potential number of filings per year to a maximum of four. We will extend the time to submit an initial OCSLA report from the proposed 60 days until 90 days after the date a service provider becomes subject to § 330.2 or § 330.3(c) requirements. For the initial submission of OCSLA reports following issuance of this rule, OCS service providers' reports will be based on conditions on the first day of the first full calendar quarter that begins after the effective date of this rule, with initial reports due on the first business day after the close of the quarter. This assures OCS service providers will have more than one full quarter in which to prepare their initial OCSLA reports.

We will also alter proposed § 330.3(c), which stated service providers are to file a description of certain changes in service within 15 days. We are persuaded that existing and prospective shippers will not be significantly disadvantaged by relaxing the 15-day schedule to have service providers update changes quarterly. Rather than try to keep a running record of OCS service providers' operations, we believe a periodic snapshot of OCS transactions will be adequate to expose potentially discriminatory practices to public view. Accordingly, OCS gas services providers will be required to submit a description of their operations as they stand on the first day of each calendar quarter; this report will be due the first business day of the subsequent quarter; e.g., the filing due April 1, the first day of the second quarter, will describe operations as they stood on January 1, the first day of the first quarter. Thus, a service provider will have 90 days to prepare its OCSLA report, which report will be limited to describing the service provider's status

<sup>56</sup> As stated in the NOPR, we will use the definition of "affiliate" given in § 161.2(a) of our regulations as "another person which controls, is controlled by, or is under common control with, such person." As specified in § 161.2(b), "control" "includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent of more creates a rebuttable presumption of control." Although these definitions appear under Part 161 of our regulations, "Standards of Conduct for Interstate Pipelines with Marketing Affiliates," for the purpose of OCSLA reporting, they include, but are not limited to, marketing affiliates.

on one particular day. This approach should substantially reduce service providers' responsibilities from the reporting regime proposed in the NOPR. Regardless of the number of changes in affiliates, customers, rates, conditions of service, or facilities, a service provider will be required to file, at most, four OCSLA reports per year. If a service providers' operations are identical on the first and last days of any given quarter, the service provider need not submit an update the following quarter.

El Paso asks that service providers be permitted to make nonmaterial changes to filed contracts without triggering the obligation to report such changes. Because we are not prepared to parse material from nonmaterial contract terms, we will decline.<sup>57</sup> As a practical matter, because companies need only file OCSLA reports quarterly—or not at all, if there are no changed circumstances—we do not believe it will require any significant effort to maintain an up-to-date inventory of affiliates and current operating conditions with the Commission. El Paso's apprehension that submitting notice of non-material changes within 15 days thereof might require near continual filings should be put to rest by the change we adopt here. Further, we clarify that we see no need to report changes that do not disrupt the basic transparency we seek. Thus, where a contract contains provisions that provide for periodic adjustments to its terms, such as an escalator clause, and as long as current terms can be straightforwardly derived from the information on file, no update is required.

Williams maintains the complexity and rapidly changing conditions of offshore gas transactions make it impractical to specify shippers' rates and conditions of service between receipt and delivery points. This assertion challenges the premise of this rule, namely, that reporting can render a service provider's transactions transparent enough to allow interested persons to compare services among shippers. We believe the OCSLA report,

<sup>57</sup> See Filing Requirements for Interstate Natural Gas Companies, Order No. 582, 60 FR 52960 (Sep. 28, 1995), FERC Stats. & Regs. ¶ 31,025 (1995) and Order No. 582-A, 61 FR 9613 (Mar. 11, 1996), 74 FERC ¶ 61,224 (1996). These orders explain that an NGA pipeline, after filing an unexecuted *pro forma* service agreement as part of its tariff, need not file individual service agreements unless they deviate materially from the *pro forma* agreement. We found that "materiality" is likely to vary with the circumstances of each case; therefore, we found it better to allow the term to remain less strictly defined in order that the particular facts of a given contract will determine whether the deviation is material and needs to be filed. We follow that rationale here.

while not requiring a service provider to report every aspect of its operations in real time, will nevertheless be adequate to serve as the basis for informed objections. The Producer Coalition proposes more detailed reporting, with service providers directed to file full contracts and specify all factors affecting service and rates. MMS would require a complete description of each service providers' transportation costs where contracts are unavailable. We are not persuaded an expansion of the filing requirements is necessary. The point of this rule is to establish a data base as a foundation for identifying discrimination. At present, there is no such record for OCS transactions. Reporting can cure this, provided the information supplied is sufficient to allow interested persons to identify instances of unequal treatment. We expect the § 330.2 reporting requirements, without being unduly intrusive, will be adequate to this task.

Commenters are concerned the new OCSLA requirements will expose sensitive aspects of their operations to public view. This may be so, and if so, is an abrupt shift for non-NGA OCS service providers, heretofore accustomed to operating in comparative privacy. However, without making OCS transactions transparent, it is not possible to determine whether shippers are subject to discrimination. We presume OCS service providers currently offer service on an equitable basis, and thereby presume disclosure will not intrude upon or disrupt present practices. Commenters are also concerned that reporting will disclose information that could compromise their competitiveness. Service providers that believe the information they submit should be withheld from public view can request privileged and confidential treatment for such information, pursuant to § 388.112 of our regulations,<sup>58</sup> stating the rationale for their request.

OCS pipelines stress the need to tailor individually the services they offer to meet customers' particular needs. This rule need not alter such efforts. Provided an individualized service genuinely reflects a specific customer's unique requirements, we would not expect any but the designated customer to have cause to sign up for such service. Several commenters worry that rather than try to adapt to shippers' needs, the required reporting will induce OCS service providers prophylactically to retreat to the rigidity of a one-size-fits-all service agreement. This rule does not compel uniformity.

We will accept distinctions in customers' rates, conditions of service, and services rendered as long as sound reasons are put forth to warrant divergent treatment.

Duke, OCS Producers, Tejas, and Williams anticipate this rule will go beyond inducing OCS service providers to move to a standardized contract. They expect service providers to reorder their ownership interests to come within the reporting exemptions. They further suggest that owner-shippers, in order to retain their reporting exemption, will intentionally construct facilities no larger than needed to ship owner-produced gas, so as to be able to legitimately claim that capacity constraints preclude serving third parties.

We see little detriment to service providers modifying ownership interests to come within the § 330.3 reporting exemptions, although we doubt whether compliance with these reporting requirements would motivate such actions. As noted earlier, it is neither unknown nor unlawful for companies to organize their affairs so as to avoid one regulatory regime or to embrace another. Further, a reporting exemption in no way diminishes the exempt service provider's obligation to abide by the OCSLA's open access and nondiscrimination provisions. The presumption inherent in the reporting exemption is that an entity will not exploit itself. Where an exempt entity contravenes the OCSLA, we expect a principal of that entity (in all probability the person adversely impacted) will object. We dismiss speculation that exempt owner-shipper service providers might deliberately undersize new facilities so as to be able to turn away prospective third party customers. It seems unlikely that a facility owner would forego otherwise obtainable revenues merely to avoid the reporting requirements. Given that exempt and non-exempt service providers must ultimately abide by the same OCSLA nondiscrimination provisions, we do not expect opting out of reporting will confer a noticeable commercial advantage.

Duke indicates the ICA precludes disclosure of the information specified in the reporting requirements. We disagree. The ICA applies to the transportation of oil, not natural gas, and applies to common carriers, which oil pipelines are,<sup>59</sup> but gas pipelines are

not.<sup>60</sup> Moreover, the Commission has determined that it lacks jurisdiction under the ICA to regulate oil pipelines located wholly on the OCS.<sup>61</sup> Thus, we do not believe it is appropriate to rely on the ICA as a model for gas regulation under the OCSLA.

Duke, Tejas, and Williams query why our regulations are directed exclusively at OCS gas service providers, and not OCS oil service providers as well, since the open and nondiscriminatory provisions of the OCSLA apply with equal force to both OCS gas and oil operations. Here we have elected to confine our considerations to gas matters, given that we have found rates for transportation on oil pipelines to be just and reasonable,<sup>62</sup> yet have made no such finding for rates for transportation on gas lines exempt from the NGA. Thus, to protect gas shippers using NGA-exempt OCS facilities from discriminatory, exorbitant charges, we look to the OCSLA.

In place of reporting, Coastal urges that we require only a map, the name of a company contact person, and an affirmation by an officer that the company will behave in accordance with the OCSLA. This is insufficient. Our experience, affirmed across the broad spectrum of federal, state, and local regulatory practice, is that, in general, a promise of propriety is not an adequate bulwark against sharp practices. We believe reporting, and the transparency it brings, will be a more reliable guarantor that appropriate practices and procedures are followed.

We clarify that the new regulatory requirements will not be triggered by either an OCS service provider's offer to a prospective shipper, a proposal to change the terms of an existing shipper's contract, or a shipper's request for new or modified service. We view offers, proposals, and requests as aspects of negotiating. Until an offer to serve or request for service is accepted,

<sup>60</sup> In amending the OCSLA, Congressman Morris Udall proposed that OCS oil and gas pipelines be operated as common carriers in order to "require the OCS \* \* \* pipelines accept, convey, transport, or purchase at reasonable rates and without discrimination." H.R. Rep. No. 95-590, 3 (1978), *reprinted in* 1978 U.S.C. C.A.N. 1528. This proposal was not incorporated into the amendments.

<sup>61</sup> Bonito, 61 FERC ¶ 61,050, *aff'd sub nom.*, Shell Oil, 47 F.3d 1186 (D.C. Cir. 1995) and Oxy, 61 FERC ¶ 61,051 (1992). Shell Oil contested the Commission's determination regarding ICA jurisdiction, but the court did not reach this issue in its review of the Commission's decision. 47 F.3d 1186, 1200.

<sup>62</sup> See Revision to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985 (1993). Whether this presumption of just and reasonable oil rates applies to oil lines located wholly on the OCS has yet to be affirmed by judicial review.

<sup>59</sup> The ICS provides that oil pipelines function as common carriers. However, ICA jurisdiction does not extend to oil lines located wholly on the OCS. See note 13.

<sup>58</sup> 18 CFR 388.112.

*i.e.*, until discussions result in an exchange of promises to perform or parties' commitment to an agreement, neither party is under any obligation, and the § 330.2 reporting requirements are not triggered.

Given the complexities of offshore operations, the array of entities offshore, and the fact that we have not heretofore collected the information described in §§ 330.2 and 330.3(b) and (c), we feel it premature to fix the filing format of an OCSLA report at this time. The new regulations, described below, will require the filing entity to identify itself and its affiliates, submit a map of its system, and itemize certain transactional information.

Submissions are to include a cover sheet titled "OCSLA Reporting Form," with the name of the OCS gas service provider, the date of the filing, and designating whether the filing is an initial or updated report. OCSLA Reports are to be filed in accordance with Rules 2001, 2003, 2004, and 2005 of our rules of practice and procedure.<sup>63</sup> Reports are to be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An original and 14 paper copies of the OCSLA Reporting Form must be submitted to the Commission. The filed OCSLA Reports will be available in the Commission's Public Reference Room and may be accessed remotely via Internet through the FERC Home Page (<http://www.ferc.fed.us>) using the Records and Information Management System (RIMS) link or the Energy Information Online icon.<sup>64</sup>

The party submitting the OCSLA report should be the party responsible for providing the service described. This may be either the owner or the operator of the facility. As with NGA submissions, where multiple parties are involved in the ownership and/or operation of an OCS facility, the parties will typically jointly authorize a single entity (composed of one or more of the owners or operators) to be formally responsible for the filing.<sup>65</sup> We leave to the OCS service provider's discretion whether to submit a single system-wide report or file separate facility-by-facility reports. Where facilities under the

control of one entity can be straightforwardly segregated into several discrete subsystems, it may be useful to submit an OCSLA report or reports that treat the separate subsystem individually.

Under § 330.2(a), OCS service providers are to specify the date of the filing; name and address of the gas service provider; name and address of a contact person; and the title, name, and address of the gas service provider's officers if a corporation or general partners if a partnership. In addition, the gas service provider must submit a description and map of its facilities, denoting the facilities' location, length, size, and the points at which service is rendered, with the boundaries of any rate zones or rate areas identified. The map is to be updated in the event of any major changes to the service provider's facilities. The gas service provider must identify all affiliates engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas, providing the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the service provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the service provider.

In proposed § 330.2(b)(1) in the NOPR, we specified OCS service providers were to file copies of all current gas service contracts. We are persuaded by the comments that full disclosure of all terms of all contracts is not necessary to reach a workable degree of transactional transparency; thus, we will modify the requirement set forth in the NOPR to diminish the burden on reporting entities. Also, we expect information necessary to permit comparisons of shippers' rates and conditions of service can be most effectively accessed if summarized and presented in tabular form, rather than as a bundle of individual contracts. Accordingly, we will not require copies of actual contracts to be filed. Instead, pursuant to revised § 330.2(b), gas service providers must provide a table of shippers and services. This portion of the OCSLA report should contain headings that specify: each customer's full legal name and indicate whether the customer is an affiliate; the contract number under which each customer receives service; the nature of the service provided; the primary receipt point(s) and the primary delivery point(s); the rate between the points in

cents, or dollars and cents, per thermal unit, including an explanation of how the rate is derived if it is composed of separate components (*e.g.*, a reservation charge and a usage charge). Clearly, important conditions of service include contract volumes, the effective and expiration date of the contract, dedication of gas supply, gas quality standards, scheduling priorities, imbalance agreements, billing and payment arrangements, and customer alternatives. Where these or other conditions are relevant to accurately evaluate whether similarly situated shippers receive nondiscriminatory treatment, we expect the service provider to supply all terms needed to permit a meaningful comparison among shippers served. Not to do so is to invite a Commission inquiry into apparent service disparities or allegations of inequitable treatment.

As noted in comments, certain OCS companies may not render service under formal contracts. Although we believe that comparing rates and conditions of service among customers can be done most effectively when information is presented in the manner described above, to accommodate OCS entities that are not in a position to submit reports based on existing contracts, we will retain the alternative reporting requirements proposed in the NOPR in § 330.2(b)(2), now redesignated as § 330.2(b)(9). This alternative report must provide information sufficient to derive rates charged (in cents, or dollars and cents, per thermal unit) and conditions applicable for service between two points. Nondiscrimination implies all customers would be offered service under the same terms. Any deviation from this practice calls for further explanation, as specified in § 330.2(b)(9)(iv).

#### *E. Discrimination and Denial of Access*

##### 1. Comments

El Paso requests that the Commission state that the OCSLA's nondiscrimination provision is equivalent to the NGA's prohibition against undue discrimination, thereby placing all offshore service providers under a single standard. El Paso notes that the Commission has already done so, in part, by stating that compliance with Part 284 regulations regarding open-access under the NGA would fulfill the OCSLA's nondiscrimination requirements.<sup>66</sup>

<sup>66</sup> See Order No. 509-A, stating Order No. 509 does not preclude OCS pipelines from selectively discounting Part 284 offshore transportation rates "for shippers that are not similarly situated." Leviathan reads Order Nos. 509 and 509-A as

<sup>63</sup> 18 CFR 385.2001, .2003, .2004, and .2005.

<sup>64</sup> In Docket No. PL98-1-000, Public Access to Information and Electronic Filing, we anticipate that, with limited exceptions, all filings by regulated entities will be made in electronic form. We expect OCSLA reports, at some future point, to be made electronically, and expect, after further experience, to provide a format for such filings.

<sup>65</sup> The party submitting the OCSLA report should retain the filed information in accordance with Part 225 of the Commission's regulations. 18 CFR part 225.

El Paso, the Producer Coalition, and Tejas ask if selective discounting would be considered discriminatory under the OCSLA. El Paso maintains that provided there is a reasonable basis for differentiating among shippers, discounting is not unduly discriminatory under the NGA.<sup>67</sup> El Paso asserts that an OCSLA prohibition on discounting would preclude pipelines from lowering rates to meet competition. El Paso and Leviathan worry a strict interpretation of discrimination under the OCSLA could put an end to all FT-2 rates.<sup>68</sup>

Burlington Resources Oil & Gas Company (Burlington) requests clarification of the discrimination standard and advocates acceptance of differential rates if such rates reflect a difference in the cost to provide the similar services to different shippers.<sup>69</sup> However, where different rates are charged for similar services, Burlington proposes shifting the burden of proof to the gas service provider to demonstrate that it incurs unequal costs to supply similar services.

## 2. Commission Response

a. *Discrimination*: Several commenters cite the Commission's statement in Order No. 491 that it "interprets the language 'without discrimination' in section 5 of the OCSLA to be a higher standard than the NGA requirement to offer transportation 'without undue discrimination.'" <sup>70</sup> Although the statutes use different terminology, it is unnecessary here to determine whether or to what extent the standards for prohibited discrimination are different. As a practical matter, compliance with NGA regulations will satisfy the OCSLA standard. Operating under this presumption, as El Paso has articulated, has the advantage of measuring all offshore service providers

affirmatively finding that selective discounting enhances competition and serves the public interest.

<sup>67</sup> Citing Order No. 509-A, finding that the discounting procedures of § 284.7 of the Commission's regulations were not inconsistent with the OCSLA.

<sup>68</sup> An FT-2 rate is offered to a shipper who agrees to transport all of a specific gas reserve, in exchange for which, the shipper is not held to a fixed daily quantity or reservation charge. See, e.g., Garden Banks Gas Pipeline, LLC, 78 FERC ¶ 61,066 (1997) and Shell Gas Pipeline Company, 76 FERC ¶ 61,126 (1996).

<sup>69</sup> Burlington raised a similar issue in a rate proceeding in response to revised tariff sheets submitted by Sea Robin. In that proceeding, we determined this rulemaking would be the more appropriate forum to address general issues concerning the interpretation of the OCSLA's nondiscrimination standard with respect to discounting. Sea Robin, 88 FERC ¶ 61,120 at 61,314 (1999).

<sup>70</sup> 43 FERC ¶ 61,006 at 61,032.

by one standard and is not inconsistent with our previous interpretation of the separate statutes.

In Order No. 509, we issued all OCS NGA pipelines blanket transportation certificates to ensure they would operate on an open and nondiscriminatory basis.<sup>71</sup> We commented that "with respect to either the movement of OCS gas (on non-NGA facilities) (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted."<sup>72</sup> By now exercising our authority under the OCSLA to require certain non-NGA OCS service providers to provide information regarding their operations, we have even greater assurance that the OCSLA's requirements will be observed. As a general proposition, we believe that practices permitted under the NGA conform with OCSLA standards. None of the examples raised in the comments and discussed below set forth instances of discrimination barred under the OCSLA but acceptable under the NGA. Therefore, although we will not bar bringing a claim that a particular action acceptable under the NGA violates the OCSLA, we will presume that adherence to the NGA's open access and nondiscrimination requirements will satisfy OCSLA mandates too.

As a general proposition, under the NGA and OCSLA, similarly situated shippers should not be charged different rates for the same service. Nevertheless, we accept that as a matter of fact a gas service provider, as a result of its own physical and operational characteristics, may not incur the same costs to provide the same service to each of its shippers. Where variations in shippers' rates and conditions of service reflect genuine cost-to-serve variations, different rates and conditions are not necessarily discriminatory. Thus, we view neither the NGA sections 4 and 5 bans on "undue preference," "unreasonable difference," and "unduly discriminatory" treatment, nor the OCSLA's ban on discrimination, as an absolute prohibition on different rates or conditions of service for different customers.

We deny Burlington's request that we shift the burden of proof from the party

<sup>71</sup> In Order No. 509, we observed that "the condition of nondiscriminatory access placed on the transportation program established in Order Nos. 436 and 500 satisfies, in large measure, the open-access requirement in section 5(f)(1)(A) of the OCSLA." 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. (Regulations Preambles) ¶ 30,842 at 31,274 (1988).

<sup>72</sup> *Id.* at 31,280.

submitting a complaint to an OCS service provider when differential rates and conditions of service are identified. Notwithstanding our above observation that certain cost-based differentials could be acceptable under the OCSLA, unequal rates or conditions of service are inherently suspect. Given this, a complainant that alleges such inequities effectively obliges the service provider to explain and justify apparently discriminatory treatment. Consequently, where a service provider files an OCSLA report that contains different conditions of service or different services for similarly situated shippers, the service provider is advised to include in its report additional information. Such information might be found to justify differing rates or terms based on the service provider's cost of service or shippers' competitive characteristics or may elaborate on the nature of the conditions of service (e.g., a lower rate for larger volumes). Without the benefit of such further information, we may well attribute differing rates for seemingly similarly shippers to discrimination on the part of the service provider.

In its comments, Burlington focused on rate discounts. We have previously considered the issue of discounting and determined that discounting disparities alone do not constitute unlawful discrimination under the NGA.<sup>73</sup> Burlington contends the OCSLA's nondiscrimination standard should preclude discounting based on differing characteristics of customers and should only be permitted where it can be demonstrated that discounting is required to lower operating costs or increase capacity. The United States Court of Appeals for the District of Columbia Circuit has not interpreted the OCSLA's nondiscrimination requirements as rigidly as Burlington. In *American Gas Association v. FERC*,<sup>74</sup> the court affirmed the Commission's holding that pipelines could refuse to transport a producer's gas absent take-or-pay credits without violating the OCSLA's ban on discrimination. In the course of its discussion, the court stated:

The producers argue that the plain meaning of "nondiscriminatory" precludes any restriction on producer access to OCS pipelines. But as we noted in AGD I,<sup>(75)</sup> statutory bans on discrimination by natural monopolies have always allowed the regulatory agencies discretion to permit differing categories, including, for example,

<sup>73</sup> *Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir. 1984), cert. denied, 469 U.S. 917, 105 S.Ct. 293 (1984).

<sup>74</sup> 912 F.2d 1496, 1511-12 (D.C. Cir. 1990).

<sup>75</sup> Citing AGD I, 824 F.2d 981, 1011.

rate classifications based on customers' differing elasticities of demand.<sup>76</sup>

The portion of *AGD I* referred to above affirmed the Commission's original decision in Order No. 436 to allow open access pipelines to offer selective discounts. Accordingly, the court has not interpreted the OCSLA to prohibit OCS service providers from offering selective discounts similar to those authorized in Order No. 436. Thus, we reject Burlington's contention that customer-based discounting which could be permitted under the NGA should be prohibited under the OCSLA. Of course, as the court itself stated in *AGD I*, this does not mean that all selective discounts are nondiscriminatory.<sup>77</sup>

Commenters ask whether FT-2 rates could remain in effect under the OCSLA's nondiscrimination standard. We see no reason to preclude such rates. An FT-1 shipper agrees to transport an expressly stated quantity of gas for a fixed time, whereas an FT-2 shipper commits to transport all gas reserves from a certain site for its productive life. The latter commitment can offer a service provider greater flexibility in developing its facilities and greater assurance that its facilities' capacity will be filled over a longer term. In view of this, we are not prepared to find inherent and improper discrimination based solely on a service provider's offer to make separate rates available for separate types of firm transportation services. Typically, variable terms—such as volume incentive pricing or lower charges for customers willing to enter into longer commitments—are acceptable as long as the service provider offers the same price to all shippers willing to meet the same terms.

b. *Denial of Access.* Generally, a service provider may turn aside allegations of unlawful discrimination due to disparities in rates or conditions of service when it can convince the

Commission that such terms are a function of differences in the costs it incurs to perform the same service for separate shippers or are attributable to differences in the competitive characteristics of the customers served. We note that an OCS service provider offering uniform rates and conditions of service is not immunized from charges of discrimination or a denial of access. For example, an OCS service provider may offer all customers identical terms of service, but may charge rates disproportionately higher than rates charged by regional competitors for comparable service. In such a case, particularly if the service provider's customers lack any transportation alternatives, we may find that high rates have the effect of denying access. Thus, rates that appear to conform with the OCSLA's nondiscrimination requirement may nonetheless be found to conflict with the OCSLA's open access requirement.

#### F. Enforcement

##### 1. Comments

OCS Producers find it unreasonable for the Commission to require OCSLA reports while at the same time declaring it does not intend to "scrutinize each submission with the aim of identifying and challenging every aspect of a (gas service provider's) operations that could conceivably lead to an OCSLA-barred act."<sup>78</sup>

Tejas requests the Commission specify how enforcement will proceed.

##### 2. Commission Response

OCS Producers' apprehension that the Commission will play only a passive role is unfounded; we do not expect to rely solely on voluntary compliance with the OCSLA requirements. We draw a distinction between the prior approval required under the NGA and the after-the-fact monitoring we will take on under the OCSLA. While we anticipate shippers, potential shippers, and competitors will actively follow the OCSLA reports and be able to bring examples of alleged discrimination to our attention, we expect to monitor the filings and act on our own initiative where we suspect discrimination. The transparency engendered by reporting should permit us to police practices presently obscured from view.

Information is the essential predicate to a complaint. Where before we presumed service providers operated on an open and nondiscriminatory basis, we will now have affirmative assurance that this is the case. We expect reporting

will move us from a *laissez faire* to a light-handed regulatory regime. Ideally, complaints will be resolved based exclusively on information contained in a service provider's OCSLA report and supplied by the complainant.<sup>79</sup>

However, we recognize that when a claim is raised, further investigation may nevertheless be required to resolve certain issues.

When a service provider's report meets minimum § 330.2 requirements, but in so doing presents the appearance of impropriety (e.g., affiliates seemingly served on more favorable terms than nonaffiliates), it may behoove the service provider to include information that justifies any apparent disparate treatment. Otherwise, the Commission, on its own initiative or in response to a request, may require the service provider to give further detail and explanation regarding its transactions.

In addition to acting via the complaint process, allegations of OCSLA discrimination may be addressed and resolved via the Commission's Enforcement Hotline<sup>80</sup> and alternative dispute resolution processes.<sup>81</sup>

#### IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>82</sup> However, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.<sup>83</sup> The action taken here—the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended—qualifies for such an exclusion.<sup>84</sup> This rule is procedural in nature, it directs certain offshore gas service providers to make certain information publicly available. Therefore, no environmental analysis is necessary, and none has been done in

<sup>76</sup> 912 F.2d 1496, 1512. See also *Williston Basin Interstate Pipeline Company*, 85 FERC ¶ 61,247 at 62,028–29 (1999), wherein we found discounting to meet competitive conditions, i.e., customers' capability to switch fuel supplier or type, is not *per se* discriminatory, since "[o]ffering discounts sufficient to keep customers with elastic demands on the system will maximize throughput and revenue recovery from those customers, thereby benefitting all customers on the system."

<sup>77</sup> 824 F.2d 981, 1011–12. We may find discounting unacceptable if offered for reasons other than to meet competitive pressures, or if offered preferentially, e.g., only to a service provider's affiliates. See our discussion of discounting under the NGA in *Williston Basin Interstate Pipeline Company*, 84 FERC ¶ 61,348 (1998), *reh'g denied*, 85 FERC ¶ 61,247 (1998); *Southern Natural Gas*, 67 FERC ¶ 61,155 (1994); and in the Policy Statement Providing Guidance with Respect to the Designing of Rates, 47 FERC ¶ 61,295 (1989).

<sup>78</sup> NOPR, 64 FR 37718 at 37723.

<sup>79</sup> This outcome would conform with aspirations we expressed in revising Rule 206 of our rules of practice and procedure to require a complainant satisfy a higher threshold in terms of the information presented in the interest of realizing an expedited resolution. See 18 CFR 385.206(b).

<sup>80</sup> 18 CFR part 1b. In the Commission's recent revision of its complaint procedures, it codified as § 385.218 simplified procedures for small controversies, which may prove an effective means to resolve certain OCS conflicts.

<sup>81</sup> 18 CFR 385.604–06.

<sup>82</sup> Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987), codified at 18 CFR part 380.

<sup>83</sup> 18 CFR 380.4(a)(2)(ii).

<sup>84</sup> 18 CFR 380.4.

connection with the regulations promulgated by this rule.

**V. Regulatory Flexibility Certification**

The Regulatory Flexibility Act of 1980 (RFA)<sup>85</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.<sup>86</sup>

The Commission does not believe that this rule would have a significant economic impact on small entities. Commenters claim some of the entities that will be required to file for the first time pursuant to the new regulations may fall within the RFA's definition of small entity.<sup>87</sup> Although none of the comments name any such entities, we acknowledge that there may be businesses qualifying as small under the RFA definition that will be compelled to report information heretofore withheld from public view. However, generally, companies that transport gas for hire on the OCS do not qualify as small. OCS producers are more likely to qualify as small, but the exemptions of § 330.3 should effectively exclude producers from the new reporting requirements. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

**VI. Information Collection Requirements**

The following collection of information contained in this final rule

(new Subchapter O) is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>88</sup> The Commission will identify the information required as FERC-545 for OCSLA-jurisdictional gas service providers.

The regulations will impose new reporting requirements on non-NGA-regulated OCS gas service providers with multiple non-owner shippers, requiring them to make an initial submission of specific information—information which should be readily available in the ordinary course of business—and then make quarterly filings if there are changes to the initially submitted information. As long as the status of a gas service provider's affiliations, customers, rates, conditions of service, and facilities remain the same, there is no need to file again. The new rule will not apply to facilities located upstream of a point where gas is first collected, separated, dehydrated, or otherwise processed; thereby generally exempting OCS entities engaged exclusively in exploration and production.

Considering the complex nature of the offshore operating environment, we cannot state with assurance the exact number of entities likely to be subject to the new regulations. We estimate that, excluding entities engaged exclusively in exploration and production, there are less than 200 gas service providers total that transport gas on or across the OCS; approximately 30 of these are currently subject to our NGA jurisdiction. We expect the majority of the NGA-exempt OCS service providers will qualify for a

reporting exemption pursuant to § 330.3(a)(1) or (2). This final rule modifies the exemptions proposed in the NOPR by adding § 330.3(a)(4), which exempts NGA-regulated service providers from the OCSLA reporting requirements. This additional exemption reduces the number of service providers that will be subject to the new filing requirements. In the NOPR, we estimated 70 service providers could be expected to file OCSLA reports under the new regulations. This number included the NGA-regulated entities that are now exempt. Consequently, we reduce the number of service providers we expect to file from 70 to 55.

In the NOPR, we anticipated that the OCS service providers subject to the new regulations would be required to update the information on file twice a year. The comments have convinced us that a significant portion of OCS service providers are likely to alter their affiliates, customers, rates, conditions of service, or facilities far more frequently. In response, we have eliminated the proposed § 330.3(c) requirement that service providers update their reports within 15 days of any change. Instead, we will require that filed reports, when necessary, be updated quarterly. For the purposes of estimating the reporting burden, we will assume all reporting entities will file every quarter. The estimated number of hours per response remains the same.

The burden estimates for complying with this rule are as follows:

*Public Reporting Burden:* Estimated Annual Burden.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC-545 .....	55	4	8	1,760

Total Annual Hours for Collection (Reporting + Record Keeping (if appropriate)) = 1,760.

During the first year after the proposed rules become effective, most of the burden will consist of an initial, one-time compliance filing. In subsequent years, most of the burden will consist of OCSLA reports updating the initial filing.

*Information Collection Costs:* The Commission projects the average annualized cost per respondent to

comply with the new OCSLA reporting requirement will be as follows:

Annualized Capital/Startup Costs.	0
Annualized Costs (Operations & Maintenance).	\$88,000 (\$50 per hour)
Total Annualized Costs.	\$88,000

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>89</sup>

Accordingly, pursuant to OMB regulations, the Commission is providing notice of this information collection to OMB.

*Title:* FERC-545, Gas Pipeline Rates: Rate Change (Non-Formal).

*Action:* Proposed Data Collection.

*OMB Control No.:* 1902-0154. The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

revenues are less than \$5 million. See 13 CFR 121.201.

<sup>85</sup> 5 U.S.C. 3507(d).

<sup>86</sup> 5 U.S.C. 605(b).

<sup>85</sup> 5 U.S.C. 601-612.

<sup>86</sup> 5 U.S.C. 605(b).

<sup>87</sup> 5 U.S.C. 601(3). Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and

operated and which is not dominant in its field of operations. A business engaged in oil and gas extraction may be small if it has fewer than 500 employees, a business engaged in oil and gas field exploration services may be small if annual

*Respondents:* Business or other for-profit, including small businesses.

*Frequency of Responses:* Initial, one-time filing; updated if status changes.

*Necessity of the Information:* The final rule implements the Commission's authority under the OCSLA to assure open and nondiscriminatory access for gas moving on or across the OCS by collecting certain information concerning OCS gas service providers' affiliations, rates, terms and conditions of service, and facilities. Without this information, neither the Commission nor a prospective or existing shipper will be able to determine whether the existing or proposed conditions of service discriminate or deny access. Implementation of these data requirements will help the Commission carry out its responsibilities under the OCSLA and coincide with the current competitive regulatory environment which the Commission fostered under Order No. 636.

*Internal Review:* The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the OCSLA reporting requirements. The Commission's staff will use the data in the OCS gas service providers' filings to determine whether their operations are consistent with the nondiscriminatory, open access provisions of the OCSLA. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

## VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.fed.us>) and on FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m., Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page in the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and RIMS.

—CIPS provide access to texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the FERC Website during normal business hours from our Help line at (202) 208-2222 (E-mail to [WebMaster@ferc.fed.us](mailto:WebMaster@ferc.fed.us)) or the Public Reference at (202) 208-1371 (E-Mail to [public.referenceroom@ferc.fed.us](mailto:public.referenceroom@ferc.fed.us)).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

## VIII. Effective Date and Congressional Notification

The final rule will be effective May 17, 2000. The Small Business Regulatory Enforcement Act of 1966 requires agencies to report to Congress on the promulgation of final rules prior to their effective dates.<sup>90</sup> That reporting requirement applies to this final rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

### List of Subjects

18 CFR Part 330

Natural gas, Pipelines, Reporting and record keeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and record keeping requirements.

By the Commission.

**David P. Boergers**,  
Secretary.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, of the Code of Federal Regulations, as follows:

1. Subchapter O, consisting of Part 330, is added to read as follows:

## SUBCHAPTER O—REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)

### PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

Sec.

330.1 Definitions.

330.2 Reporting requirements.

330.3 Applicability of reporting requirements.

**Authority:** 43 U.S.C. 1301–1356.

#### § 330.1 Definitions.

*Affiliate* has the same meaning as found in § 161.2(a) of this chapter.

*Control* has the same meaning as found in § 161.2(b) of this chapter.

*Gas Service Provider* means any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS.

*Outer Continental Shelf (OCS)* has the same meaning as found in section 1331(a) of the Outer Continental Shelf Lands Act (OCSLA);

#### § 330.2 Reporting requirements.

(a) Gas Service Providers must file with the Commission an OCSLA Reporting Form consisting of the:

- (1) Date of the filing;
- (2) Full legal name and address of the Gas Service Provider;
- (3) Name and address of a contact person;

(4) The title, name, and address of the Gas Service Provider's officers if a corporation or general partners if a partnership;

(5) A description and map of the facilities operated by the Gas Service Provider, denoting the facilities' location, length, and size, the points at which service is rendered, with the boundaries of any rate zones or rate areas identified; and

(6) For all entities affiliated with the Gas Service Provider and engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas: the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) Gas Service Providers must file with the Commission the conditions of service for each shipper served, consisting of:

<sup>90</sup> 5 U.S.C. 801.

(1) The full legal name of the shipper receiving service;

(2) A notation of shipper affiliation, if any;

(3) The contract number under which the shipper receives service;

(4) The type of service provided;

(5) Primary receipt point(s);

(6) Primary delivery point(s);

(7) Rates between each pair of points, and;

(8) Other conditions of service deemed relevant by the Gas Service Provider or, alternatively;

(9) A statement of the Gas Service Provider's rules, regulations, and conditions of service that includes:

(i) The rate between each pair of receipt and delivery points, if point-to-point rates are charged;

(ii) The rate per unit per mile, if mileage-based rates are charged;

(iii) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;

(iv) Any adjustments made by the Gas Service Provider to the rates charged based on gas volumes shipped, the conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

### § 330.3 Applicability of reporting requirements.

(a) The § 330.2(a) and (b) reporting requirements do not apply with respect to:

(1) A Gas Service Provider that serves exclusively a single entity (either itself or one other party), until such time as the Gas Service Provider agrees to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from a field or fields connected to a single pipeline, until such time as the Gas Service Provider offers to serve a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(3) Services rendered over facilities that feed into a facility where natural gas is first collected, separated, dehydrated, or otherwise processed; and

(4) Gas Service Providers' facilities and services regulated by the Commission under the Natural Gas Act.

(b) A Gas Service Provider that makes no filing pursuant to § 330.3(a)(1) must

comply with the specified reporting requirements within 90 days of agreeing to serve a new shipper or when required by the Commission.

(c) When a Gas Service Provider subject to these reporting requirements alters its affiliates, customers, rates, conditions of service, or facilities, within any calendar quarter, it must then file with the Commission, on the first business day of the subsequent quarter, a revised § 330.2 report describing the status of its services and facilities as of the first day of the previous quarter.

### PART 385—RULES OF PRACTICE AND PROCEDURE

2. Part 385 is amended as follows:

3. The authority citation for Part 385 is revised to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–8225r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. In § 385.2011, new paragraph (b)(6) is added to read as follows:

#### § 385.2011 Procedures for filing on electronic media (Rule 2011).

\* \* \* \* \*

(b) \* \* \*

(6) Material submitted electronically pursuant to § 330.2 of this chapter.

\* \* \* \* \*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

### Appendix

#### List of Commenters

Brooklyn Union Gas Company  
Burlington Resources Oil & Gas Company  
Coastal Field Services Company  
Duke Energy Companies  
Dynergy Midstream Services, Limited Partnership  
El Paso Energy Corporation  
Enron Interstate Pipelines  
Leviathan Gas Pipeline Partners, L.P.  
Independent Petroleum Association of America  
Interstate Natural Gas Association of America  
Natural Gas Supply Association  
OCS Producers  
Producer Coalition  
United States Department of the Interior, Minerals Management Service  
Williams Companies, Inc.  
Tejas Offshore Pipeline, LLC

[FR Doc. 00–9447 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–U

### RAILROAD RETIREMENT BOARD

#### 20 CFR Part 220

#### RIN 3220–AB42

#### Determining Disability

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby amends its disability regulations to discontinue the current policy of conducting continuing disability reviews (CDR's) for medical recovery of disability annuitants in medical improvement not expected (MINE) cases. The Board has found that these reviews have not been cost effective and impose an unnecessary burden on the annuitant.

**EFFECTIVE DATE:** This rule will be effective May 17, 2000.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

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

**SUPPLEMENTARY INFORMATION:** The Board conducts continuing disability reviews (CDRs) to determine whether or not a disability annuitant continues to meet the disability requirements contained in the Railroad Retirement Act and, in some cases, the Social Security Act. Payment of cash benefits based on disability ends if the medical or other evidence shows that the annuitant is no longer disabled under the standards set out in the Railroad Retirement Act or, for some benefits, the Social Security Act. Section 220.186 of the regulations of the Board provides when and how often the Board will conduct a CDR. This rulemaking would amend § 220.186(d) to discontinue the Board's current policy of conducting a CDR in cases where medical improvement is not expected (MINE). The current regulation requires a review no less frequently than once every 7 years but no more frequently than once every 5 years in MINE cases. The Board's CDR of MINE cases has not proved cost effective. For fiscal years 1995 through 1997 the Board conducted 552 MINE exams; however, in only 1 case did the evidence merit termination of the annuity. For fiscal years 1998 and 1999, 300 MINE reviews were conducted with no annuity terminations. Such results, in the Board's view, do not justify continuation of this program. Consequently, the Board proposes to cease routine continuing disability review in these cases. The cessation will be of routine reviews only. These cases

will still be reviewed for continuing eligibility: If the beneficiary returns to work and successfully completes a trial work period; if substantial earnings are posted to the beneficiary's earnings record; or if information is received either from the annuitant or a reliable source that the annuitant has recovered or returned to work, or that a review is otherwise warranted.

The Board published this rule as a proposed rule on November 18, 1999, and invited comments by January 18, 2000. No comments were received. The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

#### List of Subjects in 20 CFR Part 220.186

Disability benefits, Railroad employees; Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, part 220 of the Code of Federal Regulations as follows:

#### PART 220—DETERMINING DISABILITY

1. The authority citation for part 220 continues to read as follows:

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

#### § 220.186 When and how often the Board will conduct a continuing disability review. [Amended]

2. In § 220.186, paragraph (b)(2), remove the phrase “(medical improvement possible or medical improvement not expected)”, and paragraph (d), remove the fourth sentence which reads: “If the annuitant's disability is considered permanent, the Board will review the annuitant's continuing eligibility for benefits no less frequently than once every 7 years but no more frequently than once every 5 years.”, and add in its place “If no medical improvement is expected in the annuitant's impairment(s), the Board will not routinely review the annuitant's continuing eligibility.”

Dated: April 6, 2000.

By Authority of the Board.

For the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00-9516 Filed 4-14-00; 8:45 am]

BILLING CODE 7905-01-P

#### DEPARTMENT OF DEFENSE

#### National Reconnaissance Office

#### 32 CFR Part 326

#### National Reconnaissance Office Privacy Act Program

**AGENCY:** National Reconnaissance Office, DOD

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the National Reconnaissance Office Privacy Act Program. This rule establishes policies and procedures for implementing the NRO Privacy Program, and delegates authorities and assigns responsibilities for the administration of the NRO Privacy Program.

**EFFECTIVE DATE:** March 20, 2000.

**ADDRESSES:** National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Freimann at (703) 808-5029.

**SUPPLEMENTARY INFORMATION:** The proposed rule for the NRO Privacy Act Program was published on January 19, 2000, at 65 FR 2912. No comments were received, therefore, the rule is being adopted as a final rule.

#### Executive Order 12866, Regulatory Planning and Review

It has been determined that 32 CFR part 326 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of \$100 million or more; or adversely affect in a material way the economy; a section 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;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### Public Law 96-354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

#### Public Law 96-511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

#### List of Subjects in 32 CFR Part 326

Privacy.

Accordingly, Title 32 of the CFR is amended in Chapter I, subchapter O, by adding part 326 to read as follows:

#### PART 326—NATIONAL RECONNAISSANCE OFFICE PRIVACY ACT PROGRAM

Sec.

- 326.1 Purpose.
- 326.2 Application.
- 326.3 Definitions.
- 326.4 Policy.
- 326.5 Responsibilities.
- 326.6 Policies for processing requests for records.
- 326.7 Procedures for collection.
- 326.8 Procedures for requesting access.
- 326.9 Procedures for disclosure of requested records.
- 326.10 Procedures to appeal denial of access to requested record.
- 326.11 Special procedures for disclosure of medical and psychological records.
- 326.12 Procedures to request amendment or correction of record.
- 326.13 Procedures to appeal denial of amendment.
- 326.14 Disclosure of record to person other than subject.
- 326.15 Fees.
- 326.16 Penalties.
- 326.17 Exemptions.

**Authority:** Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

#### § 326.1 Purpose.

This part implements the basic policies and procedures outlined in the Privacy Act of 1974, as amended (5 U.S.C. 552a), and 32 CFR part 310; and establishes the National Reconnaissance Office Privacy Program (NRO) by setting policies and procedures for the collection and disclosure of information maintained in records on individuals, the handling of requests for amendment or correction of such records, appeal and review of NRO decisions on these matters, and the application of exemptions.

#### § 326.2 Application.

Obligations under this part apply to all employees detailed, attached, or assigned to or authorized to act as agents of the National Reconnaissance Office. The provisions of this part shall be made applicable by contract or other legally binding action to government contractors whenever a contract is let for the operation of a system of records or a portion of a system of records.

**§ 326.3 Definitions.**

*Access.* The review or copying of a record or its parts contained in a system of records by a requester.

*Agency.* Any executive or military department, other establishment, or entity included in the definition of agency in 5 U.S.C. 522(f).

*Control.* Ownership or authority of the NRO pursuant to federal statute or privilege to regulate official or public access to records.

*Disclosure.* The authorized transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

*He, him, and himself.* Generically used in this part to refer to both males and females.

*Individual or requester.* A living citizen of the U.S. or an alien lawfully admitted to the U.S. for permanent residence and to whom a record might pertain. The legal guardian or legally authorized agent of an individual has the same rights as the individual and may act on his behalf. No rights are vested in the representative of a dead person or in persons acting in an entrepreneurial (for example, sole proprietorship or partnership) capacity under this part.

*Interested party.* Any official in the executive (including military), legislative, or judicial branches of government, U.S. or foreign, or U.S. Government contractor who, in the sole discretion of the NRO, has a subject matter or physical interest in the documents or information at issue.

*Maintain.* To collect, use, store, disclose, retain, or disseminate when used in connection with records.

*Originator.* The NRO employee or contractor who created the document at issue or his successor in office or any official who has been delegated release or declassification authority pursuant to law.

*Personal information.* Information about any individual that is intimate or private to the individual, as distinguished from 'corporate information' which is in the public domain and related solely to the individual's official functions or public life (i.e., employee's name, job title, work phone, grade/rank, job location).

*Privacy Act Coordinator.* The NRO Information and Access Release Center Chief who serves as the NRO manager of the information review and release

program instituted under the Privacy Act.

*Record.* Any item, collection, or grouping of information about an individual that is maintained by the NRO, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name or identifying number (such as Social Security or employee number), symbol, or other identifying particular assigned to the individual, such as fingerprint, voice print, or photograph. Records include data about individuals which is stored in computers.

*Responsive record.* Documents or records that the NRO has determined to be within the scope of a Privacy Act request.

*Routine use.* The disclosure of a record outside the Department of Defense (DoD) for a use that is compatible with the purpose for which the information was collected and maintained by NRO. Routine use encompasses not only common or ordinary use, but also all the proper and necessary uses of the record even if such uses occur infrequently. All routine uses must be published in the **Federal Register**.

*System managers.* Officials who have overall responsibility for a Privacy Act system of records.

*System notice.* The official public notice published in the Federal Register of the existence and general content of the system of records.

*System of records.* A group of any records under the control of the NRO from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

*Working days.* Days when the NRO is operating and specifically excludes Saturdays, Sundays, and legal public holidays.

**§ 326.4 Policy.****(a) Records about individuals—**

(1) *Collection.* The NRO will safeguard the privacy of individuals identified in its records. Information about an individual will, to the greatest extent practicable, be collected directly from the individual, and personal information will be protected from unintentional or unauthorized disclosure by treating it as marked 'For Official Use Only.' Access to personal information will be restricted to those employees whose official duties require it during the regular course of business.

(i) *Privacy Act Statement.* When an individual is requested to furnish

personal information about himself for inclusion in a system of records, a Privacy Act Statement is required to enable him to make an informed decision whether to provide the information requested. A Privacy Act Statement may appear, in order of preference, at the top or bottom of a form, on the reverse side of a form, or attached to the form as a tear-off sheet.

(ii) *Social Security Numbers (SSNs).* It is unlawful for any governmental agency to deny an individual any right, benefit, or privilege provided by law because the individual refuses to provide his SSN. However, if a federal statute requires that the SSN be furnished or if the SSN is required to verify the identity of an individual in a system of records that was established and in use before January 1, 1975, this restriction does not apply. When collecting the SSN, a 'qualified' Privacy Act Statement must be provided even if the SSN will not be maintained in a system of records. The 'qualified' Privacy Act Statement shall inform the individual whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

(2) *Maintenance.* The NRO will maintain in its records only such information about an individual which is accurate, relevant, timely, and necessary to accomplish a purpose which is required by statute or Executive Order. All records used by the NRO to make determinations about individuals will be maintained with such accuracy and completeness as is reasonably necessary to assure fairness to the individual.

(3) *Existence.* The applicability of the Privacy Act depends on the existence of an identifiable record. The procedures described in NRO regulations do not require that a record be created or that an individual be given access to records that are not retrieved by name or other individual identifier. Nor do these procedures entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding. NRO will maintain only those systems of records that have been described through notices published in the **Federal Register**. A system of records from which records may be retrieved by a name or some other personal identifier must be under NRO control for consideration under this part.

(4) *Disposal.* The NRO will archive, dispose of, or destroy records containing personal data in a manner to prevent specific records from being readily

identified or inadvertently compromised.

(b) *Evaluation of records.* Statutory authority to establish and maintain a system of records does not grant unlimited authority to collect and maintain all information which may be useful or convenient. Directorates and offices maintaining records will evaluate each category of information in records systems for necessity and relevance prior to republication of all system notices in the **Federal Register** and during the design phase or change of a system of records. The following will be considered in the evaluation:

(1) Relationship of each item of information to the statutory purpose for which the system is maintained;

(2) Specific adverse consequences of not collecting each category of information; and

(3) Techniques for purging parts of the records.

(c) *Disclosure of records.* The NRO will provide the fullest access practicable by individuals to NRO records concerning them. Release of personal information to such individuals is not considered public release of information. Upon receipt of a written request, the NRO will release to individuals those records that are releasable and applicable to the individual making the request. Generally, information, other than that exempted by law and this part, will be provided to the individual. NRO personnel will comply with the Privacy Act of 1974, as amended, the DoD Privacy Act Program (32 CFR part 310), and the NRO Privacy Act Program. No NRO records shall be disclosed by any means of communication to any person or to any agency except pursuant to a written request by or the prior written consent of the individual to whom it pertains, unless disclosure of the record will be:

(1) To those employees of the NRO who have an official need for the record in the performance of their duties.

(2) Required to be disclosed to a member of the public under the Freedom of Information Act, as amended.

(3) For a routine use as defined in the Privacy Act.

(4) To the Census Bureau for the purpose of conducting a census or survey or related activity authorized by law.

(5) To a recipient who has provided the NRO with advance, adequate written assurance that the record will be used solely as statistical research and that the record is to be transferred in a form in which the individual is not identifiable.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U. S. Government.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if such activity is authorized by law and if the head of the agency or governmental entity has made a written request to the NRO specifying the particular portion of the record and the law enforcement activity for which the record is sought (blanket requests will not be accepted); a record may also be disclosed to a law enforcement agency at the initiative of the NRO pursuant to the blanket routine use for law enforcement when criminal conduct is indicated in the record.

(8) To a person showing compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is sent to the last known address of the individual to whom the record pertains (emergency medical information may be released by telephone).

(9) To Congress or any committee, joint committee, or subcommittee of Congress with respect to a matter under its jurisdiction. This provision does not authorize the disclosure of a record to members of Congress acting in their individual capacities or on behalf of their constituents making third party requests. However, such releases may be made pursuant to the blanket routine use for Congressional inquiries when a constituent has sought the assistance of his Congressman for the constituent's individual record(s).

(10) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office.

(11) Pursuant to an order of a court of competent jurisdiction. When the record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court which issued it, the NRO will make reasonable efforts to notify the individual to whom the record pertains by mail at the most recent address contained in NRO records.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(d) *Allocation of resources.* NRO components shall exercise due diligence in their responsibilities under the Privacy Act and must devote a reasonable level of personnel to respond to requests on a 'first-in, first-out' basis. In allocating Privacy Act resources, the component shall consider its imposed business demands, the totality of

resources available to it, the information review and release demands imposed by Congress and other governmental authorities, and the rights of the public under various disclosure laws. The PA Coordinator will establish priorities for cases consistent with established law to ensure that smaller as well as larger 'project' cases receive equitable attention.

(e) *Written permission for disclosure.* Disclosures made under circumstances not delineated in this part shall be made only if the written permission of the individual involved has been obtained. Written permission shall be recorded on or appended to the document transmitting the personal information to the other agency, in which case no separate accounting of the disclosure need be made. Written permission is required in each case; that is, once obtained, written permission for one case does not constitute blanket permission for other disclosures.

(f) *Coordination with other government agencies.* Records systems of the NRO may contain records originated by other agencies that may have claimed exemptions for them under the Privacy Act. Where appropriate, coordination will be effected with the originating agency. The NRO will comply with the instructions issued by another agency responsible for a system of records (e.g., Office of Personnel Management) in granting access to such records. Records containing information or interests of another government agency will not be released until coordination with the other agency involved. A request for information pertaining to the individual in an NRO record system received from another federal agency will be coordinated with the originating agency.

(g) *Accounting for disclosure.* Except for disclosures made under paragraphs (c)(1) and (c)(2) of this section, an accurate account of the disclosures shall be kept by the record holder in consultation with the Privacy Act Coordinator (PA Coordinator). There need not be a notation on a single document of every disclosure of a particular record. The record holder should be able to construct from its system of records the accounting information:

(1) When required by the individual to whom the record pertains, or

(2) When necessary to inform previous recipients of any amended records. The accounting shall be retained for at least five years or for the life of the record, whichever is longer, to be available for review by the subject of the record at his request except for

disclosures made under paragraph (c)(7) of this section.

(h) *Application of rules.* Any request for access, amendment, correction, etc., of personal record information in a system of records by an individual to whom such information pertains will be governed by the Privacy Act of 1974, as amended, DoD regulatory authority, and this part, exclusively. Any denial or exemption of all or part of a record from access, disclosure, amendment, correction, etc., will be processed under DoD regulatory authority and this part, unless court order or other competent authority directs otherwise.

(i) *First Amendment rights.* No NRO official or component may maintain any information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or pertains to an authorized law enforcement activity.

(j) *Non-system information on individuals.* The following information is not considered part of personal records systems reportable under this part and may be maintained by NRO for ready identification, contact, and property control purposes only, provided it is not maintained in a system of records. If at any time the information described in this paragraph is being maintained in a system of records, the information is subject to the Privacy Act.

(1) Identification information at doorways, building directories, desks, lockers, name tags, etc.

(2) Geographical or agency contact cards.

(3) Property receipts and control logs for building passes, credentials, vehicles, etc.

(4) Personal working notes of employees that are merely an extension of the author's memory, if maintained properly, do not come under the Privacy Act. Personal notes are not considered official NRO records if they meet the following requirements:

(i) Keeping or discarding notes must be at the sole discretion of the author. Any requirement by supervising authority, whether by oral or written directive, regulation, policy, or memo to maintain such notes, likely would cause the notes to become official agency records.

(ii) Such notes must be restricted to the author's personal use as memory aids, and only the author may have access to them. Passing them to a successor or showing them to other personnel (including supporting staff such as secretaries) would likely cause them to become agency records.

(5) Rosters. The NRO has no restriction against rosters that contain only corporate information such as name, work telephone number, and position. Good recordkeeping practices dictate that only rosters that are relevant and necessary to the NRO's operations may be maintained, and therefore convenience rosters, which by definition do not satisfy the test, may not be maintained.

#### **§ 326.5 Responsibilities.**

(a) The Director, NRO (DNRO):

(1) Supervises the execution of the Privacy Act and this part within the NRO.

(2) Appoints:

(i) The Chief, Information Access and Release Center as the NRO Privacy Act Coordinator.

(ii) The Director of Security, the Director of Policy, and the NRO General Counsel as the NRO Appeals Panel; and

(iii) The Chief of Staff as the Senior Official for Privacy Policy and the Privacy Act Appeal Authority.

(b) The Privacy Act Coordinator, NRO:

(1) Establishes, issues, and updates policy for the NRO Privacy Act Program, monitors compliance, and serves as the principal NRO point of contact on all Privacy Act matters.

(2) Receives, processes, and responds to all Privacy Act requests received by the NRO, including:

(i) Granting, granting in part, or denying an initial Privacy Act request for access or amendment to a record, and notifying a requester of such actions taken in regard to that request.

(ii) Granting a requester access to all or part of a record under dispute when, after a review, a decision is made in favor of a requester.

(iii) Directing the appropriate NRO component to amend a record and advising other record holders to amend a record when a decision is made in favor of a requester.

(iv) Notifying a requester, if a request is denied, of the reasons for denial and the procedures for appeal to the Privacy Act Appeal Authority.

(v) Notifying a requester of his right to file a concise statement of his reasons for disagreement with the NRO's refusal to amend a record.

(vi) Directing that a requester's statement of reasons for the request to amend, his concise statement of disagreement with the NRO's refusal to amend a record, and the NRO's letter of denial be included in the file containing the disputed record.

(vii) Referring all appeals to the Privacy Act Appeals Panel and Appeal Authority.

(viii) Notifying a requester of any required fees and delivering such collected fees to the Comptroller.

(ix) Obtaining supplemental information from the requester when required.

(3) Serves as the NRO point of contact with the Defense Privacy Office.

(4) Reviews NRO use of records, and at least 40 calendar days prior to establishing a new agency system of records, ensures that new or amended notices are prepared and published in the **Federal Register** consistent with the requirements of 32 CFR part 310;

(5) Coordinates with forms managers to ensure that a Privacy Act Statement is on all forms or in all other methods used to collect personal information for inclusion in any NRO records system;

(6) Prepares the NRO Privacy Act report for submission to the DoD Privacy Office and to other authorities, as required by 32 CFR part 310.

(7) Reviews all procedures, including forms, which require an individual to furnish information for conformity with the Privacy Act.

(8) Retains the accounting of disclosures for at least five years or for the life of the record, whichever is longer, to be available for review by the subject of the record at his request except for disclosures made under paragraph (c)(7) of § 326.4; and

(9) Develops and oversees Privacy Act Program training for NRO personnel.

(c) The Privacy Act Appeals Panel, NRO:

(1) Meets and reviews all denials appealed by means of the NRO internal appeals process; and

(2) Recommends a finding to the Privacy Act Appeal Authority by a majority vote of those present at the meeting and based on the written record and the panel's deliberations.

(d) The Privacy Act Appeal Authority, NRO:

(1) Determines all NRO Privacy Act appeals.

(2) Reports the determination to the PA Coordinator.

(3) Signs the final appeal letter to the requester.

(e) General Counsel, NRO:

(1) Ensures uniformity in NRO legal positions concerning the Privacy Act and reviews proposed responses to Privacy Act requests to ensure legal sufficiency, as appropriate.

(2) Consults with DoD General Counsel on final denials that may be inconsistent with other final decisions within DoD; raises new legal issues of potential significance to other government agencies.

(3) Provides advice and assistance to the DNRO, the PA Coordinator, and

component Directors, as required, in the discharge of their responsibilities pertaining to the Privacy Act.

(4) Advises on all legal matters concerning the Privacy Act, including legal decisions, rulings by the Department of Justice, and actions by DoD and other commissions on the Privacy Act.

(5) Approves all Privacy Act Statements prior to their reproduction and distribution.

(6) Acts as the NRO focal point for Privacy Act litigation with the Department of Justice.

(7) Provides a status report to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, whenever an individual brings suit under subsection (g) of the Privacy Act against NRO.

(f) Chief Information Officer (CIO), NRO:

(1) Ensures that NRO systems of records databases have procedures to protect the confidentiality of personal records maintained or processed by means of automatic data processing (ADP) systems and ensures that ADP systems contain appropriate safeguards for the privacy of personnel.

(2) Coordinates with the PA Coordinator before developing or modifying CIO-sponsored ADP supported files subject to the provisions of this part.

(g) Directorate and Office Managers, NRO:

(1) Ensure that records contained in their directorate or office systems of records are disclosed only to those NRO officials or employees who require the records for official purposes.

(2) Review their own directorate and office systems of records to ensure and certify that no systems of records other than those listed in the **Federal Register** System Notices are maintained; notify the CIO and the PA Coordinator promptly whenever there are changes to processing equipment, hardware, software, or database that may require an amended system notice.

(3) Maintain only such information about an individual as is relevant and necessary to accomplish a purpose which is required by statute or Executive Order and identify the specific provision of law or Executive Order which provides authority for the maintenance of information in each system of records.

(h) System Managers, NRO:

(1) Ensure that adequate safeguards have been established and are enforced to prevent the misuse, unauthorized disclosure, alteration, or destruction of personal information contained in system records.

(2) Ensure that all personnel who have access to the system of records, or are engaged in developing or supervising procedures for handling records, are aware of their responsibilities established by the NRO Privacy Act Program.

(3) Evaluate each system of records during the planning stage and at regular intervals. The following factors should be considered:

(i) Relationship of data to be collected and retained to the purposes for which the system is maintained (all information must be relevant and necessary to the purpose for which it is collected).

(ii) The specific impact on the purpose or mission if categories of information are not collected (all data fields must be necessary to accomplish a lawful purpose or mission).

(iii) Whether informational needs can be met without using personal identifiers.

(iv) The cost of maintaining and disposing of records within the systems of records and the length of time each item of information must be retained according to the NRO Records Control Schedule as approved by the National Archives and Records Administration.

(4) Review system alterations or amendments to evaluate for relevancy and necessity.

(i) Forms and Information Managers. All NRO individuals responsible for forms or methods used to collect personal information from individuals will:

(1) Ensure that Privacy Act Statements are on appropriate forms and that new forms have the required Privacy Act Statement.

(2) Determine, with General Counsel's concurrence, which forms require Privacy Act Statements and will prepare such statements.

(3) Assist the initiators in determining whether a form, format, questionnaire, or report requires a Privacy Act Statement. Privacy Act Statements must be complete, specific, written in plain English, and approved by the Office of General Counsel.

(j) Employees, NRO:

(1) Will be familiar with the provisions of this part regarding the maintenance of systems of records, authorized access, and authorized disclosure;

(2) Will collect, maintain, use, and/or disseminate records containing identifiable personal information only for lawful purposes; will keep the information current, complete, relevant, and accurate for its intended use; and will safeguard the records in a system

and keep them the minimum time required;

(3) Will not disclose any personal information contained in any system of records, except as authorized by the Privacy Act and this part;

(4) Will maintain no system of records concerning individuals except those authorized, and will maintain no other information concerning individuals except as necessary for the conduct of business at the NRO;

(5) Will provide individuals a Privacy Act Statement when asking them to provide information about themselves. The Privacy Act Statement will include the authority under which the information is being requested, whether disclosure of the information is mandatory or voluntary, the purposes for which it is being requested, the uses to which it will be put, and the consequences of not providing the information;

(6) May not deny an individual any right or privilege provided by law because of that individual's failure to disclose his SSN unless such information is required by federal statute or disclosure was required by statute or regulations adopted prior to January 1, 1975. If disclosure of the SSN is not required, NRO directorates and offices are not precluded from requesting it from individuals; however, the Privacy Act Statement must make clear that the disclosure of the SSN is voluntary and, if the individual refuses to disclose it, must be prepared to identify him by alternate means.

(7) Will collect personal information directly from the subject whenever possible; employees may collect information from third parties when that information must be verified, opinions or evaluations are required, the subject cannot be contacted, or the subject requests it.

(8) Will keep paper and electronic records which contain personal information and are retrieved by name or personal identifier only in approved systems published in the Federal Register.

(9) Will amend and correct records when directed by the PA Coordinator.

(10) Will report to the PA Coordinator any disclosures of personal information from a system of records, or the maintenance of any system of records, not authorized by this part.

#### § 326.6 Policies for processing requests for records.

(a) An individual's written request for access to records about himself which does not specify the Act under which the request is made will be processed under both the Freedom of Information

Act (FOIA) and the Privacy Act and the applicable regulations. Such requests will be processed under both Acts regardless of whether the requester cites one Act, both, or neither in the request in order to ensure the maximum possible disclosure to the requester.

Individuals may not be denied access to a record pertaining to themselves merely because those records are exempt from disclosure under the FOIA.

(b) A Privacy Act request that neither specifies the system(s) of records to be searched nor identifies the substantive nature of the information sought will be processed by searching the systems of records categorized as Environmental Health, Safety and Fitness, FOIA/Privacy, General, and Security.

(c) A Privacy Act request that does not designate the system(s) of records to be searched but does identify the substantive nature of the information sought will be processed by searching those systems of records likely to have information similar to that sought by the requester.

(d) The NRO will not disclose any record to any person or government agency except by written request or prior written consent of the subject of the record unless the disclosure is required by law or is within the exceptions of the Privacy Act. If a requester authorizes another individual to obtain the requested records on his behalf, the requester shall provide a written, signed, notarized statement appointing that individual as his representative and certifying that the individual appointed may have access to the requester's records and that such access shall not constitute an invasion of his privacy nor a violation of his rights under the Privacy Act. In lieu of a notarized statement, the NRO will accept a declaration in accordance with 28 U.S.C. 1746.

(e) Upon receipt of a written request, the Privacy Act Coordinator (PA Coordinator) will release to the requester those records which are releasable and applicable to the individual making the request. Records about individuals include data stored electronically or in electronic media. Documentary material qualifies as a record if the record is maintained in a system of records.

(f) Initial availability, potential for release, and cost determination will usually be made within ten working days of the date on which a written request for any identifiable record is received by the NRO (and acknowledgement is sent to the individual). If additional time is needed due to unusual circumstances, a written notification of the delay will be

forwarded to the requester within the ten working day period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response.

(g) All requests will be handled in the order received on a 'first-in, first-out' basis. Requests will be considered for expedited processing only if the NRO determines that there is a genuine health, humanitarian, or due process reason involving possible deprivation of life or liberty which creates an exceptional and urgent need, that there is no alternative forum for the records sought, and that substantive records relevant to the stated needs may exist and be releasable.

(h) Records provided or originated by another agency or containing other agency information will not be released prior to coordination with the other agency involved.

(i) Requesting or obtaining access to records under false pretenses is a violation of the Privacy Act and is subject to criminal penalties.

#### § 326.7 Procedures for collection.

(a) To the maximum extent practical, personal information about an individual will be obtained directly from that individual.

(b) Whenever an individual is asked to provide personal information, including Social Security Number (SSN) or a personal identifier, about himself, a Privacy Act Statement will be furnished that will advise him of the authority (whether by statute or by Executive Order) under which the information is requested, whether disclosure of the information is voluntary or mandatory, the purposes for which it is requested, the uses to which it will be put, and the consequences of not providing the information.

(c) When asking third parties to provide information about other individuals, NRO employees will advise them:

(1) Of the purpose of the request, and

(2) That their identities and the information they are furnishing may be released to the individual unless they expressly request confidentiality. All persons interviewed must be informed of their rights and offered confidentiality.

#### § 326.8 Procedures for requesting access.

(a) *Request in writing.* An individual seeking notification of whether a system of records contains a record pertaining to him, or an individual seeking access to records pertaining to him which are available under the Privacy Act, shall

address the request in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715. The request should contain at least the following information:

(1) *Identification.* Reasonable identification, including first name, middle name or initial, surname, any aliases or nicknames, Social Security Number, and return address of the individual concerned, accompanied by a signed notarized statement that such information is true under penalty of perjury and swearing to or affirming his identity. An unsworn declaration, under 28 U.S.C. 1746, also is acceptable. In the case of a request for records of a sensitive nature if the PA Coordinator determines that this information does not sufficiently identify the individual, the PA Coordinator may request additional identification or clarification of information submitted by the individual.

(i) In addition, an alien lawfully admitted for permanent residence shall provide his Alien Registration Number and the date that status was acquired.

(ii) The parent or guardian of a minor or of a person judicially determined to be incompetent, or an attorney retained to represent an individual, in addition to establishing the identity of the minor or person represented as required in this part, shall provide evidence of his own identity as required in this part and evidence of such parentage, guardianship, or representation by submitting a certified copy of the minor's birth certificate, the court order establishing such guardianship, or the representation agreement which establishes the relationship.

(2) *Cost.* A statement of willingness to pay reproduction costs. Processing of requests and administrative appeals from individuals who owe outstanding fees will be held in abeyance until such fees are paid.

(3) *Record sought.* A description, to the best of his ability, of the nature of the record sought and the system in which it is thought to be included. In lieu of this, a requester may simply describe why and under what circumstances he believes that the NRO maintains responsive records; the NRO will undertake the appropriate searches.

(b) *Access on behalf of the individual.* If the requester wishes another person to obtain the records on his behalf, the requester will furnish a notarized statement or unsworn declaration appointing that person as his representative, authorizing him access to the record, and affirming that access will not constitute an invasion of the requester's privacy or a violation of his

rights under the Privacy Act. The NRO requires a written statement to authorize discussion of the individual's record in the presence of a third person.

**§ 326.9 Procedures for disclosure of requested information.**

(a) The PA Coordinator shall acknowledge receipt of the request in writing within ten working days.

(b) Upon receipt of a request, the PA Coordinator shall refer the request to those components most likely to possess responsive records. The components shall search all relevant record systems within their cognizance and shall:

(1) Determine whether a responsive record exists in a system of records.

(2) Determine whether access must be denied and on what legal basis. An individual may be denied access to his records under the Privacy Act only if an exemption has been properly claimed for all or part of the records or information requested; or if the information was compiled in reasonable anticipation of a civil action or proceeding.

(3) Approve the disclosure of records for which they are the originator.

(4) Forward to the PA Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as notification of the specific determination for any denial.

(c) When all records have been collected, the PA Coordinator shall notify the individual of the determination and shall provide an exact copy of records deemed to be accessible if a copy has been requested.

(d) When an original record is illegible, incomplete, or partially exempt from release, the PA Coordinator shall explain in terms understood by the requester the portions of a record that are unclear.

(e) If access to requested records, or any portion thereof, is denied, the PA Coordinator shall inform the requester in writing of the specific reason(s) for denial, including the specific citation to appropriate sections of the Privacy Act or other statutes, this and other NRO regulations, or the Code of Federal Regulations authorizing denial, and the right to appeal this determination through the NRO appeal procedure within 60 calendar days. The denial shall include the date of denial, the name and title/position of the denial authority, and the address of the NRO Appeal Authority. Access may be refused when the records are exempt by the Privacy Act. Usually an individual will not be denied access to the entire record, but only to those portions to

which the denial of access furthers the purpose for which an exemption was claimed.

**§ 326.10 Procedures to appeal denial of access to requested record.**

(a) Any individual whose request for access is denied may request a review of the initial decision within 60 calendar days of the date of the notification of denial of access by appealing within the NRO internal appeals process. If a requester elects to request NRO review, the request shall be sent in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, briefly identifying the particular record which is the subject of the request and setting forth the reasons for the appeal. The request should enclose a copy of the denial correspondence. The following procedures apply to appeals within the NRO:

(1) The PA Coordinator, after acknowledging receipt of the appeal, shall promptly refer the appeal to the record-holding components, informing them of the date of receipt of the appeal and requesting that the component head or his designee review the appeal.

(2) The record-holding components shall review the initial denial of access to the requested records and shall inform the PA Coordinator of their review determination.

(3) The PA Coordinator shall consolidate the component responses, review the record, direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination, and make a recommendation to the NRO Appeals Panel, which makes a recommendation to the Appeal Authority.

(4) The Appeal Authority shall notify the PA Coordinator of the result of the determination on the appeal, who shall notify the individual of the determination in writing.

(5) If the determination reverses the initial denial, the PA Coordinator shall provide a copy of the records requested. If the determination upholds the initial denial, the PA Coordinator shall inform the requester of his right to judicial review in U.S. District Court and shall include the exact reasons for denial with specific citations to the provisions of the Privacy Act, other statutes, NRO regulations, or the Code of Federal Regulations upon which the determination is based.

(b) The Appeal Authority shall act on the appeal or provide a notice of extension within 30 working days.

**§ 326.11 Special procedures for disclosure of medical and psychological records.**

When requested medical and psychological records are not exempt from disclosure, the PA Coordinator may determine which non-exempt medical or psychological records should not be sent directly to the requester because of possible harm or adverse impact to the requester or another person. In that event, the information may be disclosed to a physician named by the requester. The appointment of the physician will be in the same notarized form or declaration as described in § 326.8 and will certify that the physician is licensed to practice in the appropriate specialty (medicine, psychology, or psychiatry). Upon designation, verification of the physician's identity, and agreement by the physician to review the documents with the requester to explain the meaning of the documents and to offer counseling designed to mitigate any adverse reaction, the NRO will forward such records to the designated physician. If the requester refuses or fails to designate a physician, the record shall not be provided. Under such circumstances refusal of access is not considered a denial for Privacy Act reporting purposes. However, if the designated physician declines to furnish the records to the individual, the PA Coordinator will take action to ensure that the records are provided to the individual.

**§ 326.12 Procedures to request amendment or correction of record.**

(a) An individual may request amendment or correction of a record pertaining to him/her by addressing such request in writing, to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715. Incomplete or inaccurate requests will not be rejected categorically; instead, the requester will be asked to clarify the request as needed. A request will not be rejected or require resubmission unless additional information is essential to process the request. Usually, amendments under this part are limited to correcting factual errors and not matters of official judgment, such as promotion ratings and job performance appraisals. The requester must adequately support his claim and must identify:

(1) The particular record he wishes to amend or correct, specifying the number of pages and documents, the titles of the documents, form numbers if any, dates on documents, and individuals who signed them. Any reasonable description of the documents is

acceptable. A clear and specific description of passages, pages, or documents to be amended will expedite processing the request.

(2) The desired amending language. The requester should specify the type of amendment, including complete removal of data, passages, or documents from record or correction of information to make it accurate, more timely, complete, or relevant.

(3) A justification for such amendment or correction to include any documentary evidence supporting the request.

(b) Individuals will be required to provide verification of identity as in § 326.8. to ensure that the requester is seeking to amend records pertaining to himself and not, inadvertently or intentionally, the records of another individual.

(c) Minor factual errors in an individual's personal record may be corrected routinely upon request without resort to the Privacy Act or the provisions of this part, if the requester and the record holder agree to that procedure and the requester receives a copy of the corrected record whenever possible. A written request is not required when individuals indicate amendments during routine annual review and updating of records programs conducted by the NRO for civilian personnel and the Services for military personnel. Requests for deletion, removal of records, and amendment of substantive factual information will be processed according to the Privacy Act and the provisions of this part.

(d) The PA Coordinator shall acknowledge receipt of the request in writing within ten working days. No separate acknowledgement of receipt is necessary if the request can be either approved or denied and the requester advised within the ten-day period. For written requests presented in person, written acknowledgement may be provided at the time the request is presented.

(e) The PA Coordinator shall refer such request to the record-holder components, shall advise those components of the date of receipt, and shall request that those components make a prompt determination on such request.

(f) The record-holder components shall promptly:

(1) Make any amendment or correction to any portion of the record which the individual believes is not accurate, relevant, timely, or complete and notify the PA Coordinator and all holders and recipients of such records

and their amendments that the correction was made; or

(2) Set forth the reasons for the refusal, if they determine that the requested amendment or correction will not be made or if they decline to make the requested amendment but instead augment the official record, and so inform the PA Coordinator.

(g) The Privacy Act Coordinator shall:

(1) Inform the requester of the agency's determination to make the amendment or correction as requested and notify all prior recipients of the change to the disputed records for which an accounting had been required; or

(2) Inform the requester of the specific reasons and legal authorities for the agency's refusal and the procedures established for him to request a review of that refusal.

(h) The amendment procedure is not intended to replace other existing procedures such as those for registering grievances or appealing performance appraisal reports. In such cases the requester will be apprised of the appropriate procedures for such actions.

(i) This part does not permit the alteration of evidence presented to courts, boards, or other official proceedings.

#### **§ 326.13 Procedures to appeal denial of amendment.**

(a) Any individual whose request for amendment or correction is denied may request a review of the initial decision within 60 calendar days of the date of the notification of denial by appealing within the NRO internal appeals process. If a requester elects to request NRO review, the request shall be sent in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, briefly identifying the particular record which is the subject of the request and setting forth the reasons for the appeal. The request should enclose a copy of the denial correspondence. The following procedures apply to appeals within the NRO:

(1) The PA Coordinator, after acknowledging receipt of the appeal, shall promptly refer the appeal to the record-holding components, informing them of the date of receipt of the appeal and requesting that the component head or his designee review the appeal.

(2) The record-holding components shall review the initial denial of access to the requested records and shall inform the PA Coordinator of their review determination.

(3) The PA Coordinator shall act as secretary of the Appeals Panel. He shall:

(i) Consolidate the component responses and reasons for the initial denial.

(ii) Provide all supporting materials both furnished to and by the requester and the record-holding component.

(iii) Review the record.

(iv) Direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(v) Prepare the record and schedule the appeal for the next meeting of the Appeals Panel. The Appeals Panel shall recommend a finding to the Appeal Authority by a majority vote of those present at the meeting based on the written record and the Panel's deliberations. No personal appearances shall be permitted without the express permission of the Panel.

(4) The Appeal Authority shall notify the PA Coordinator of the result of the determination on the appeal who shall notify the individual of the determination in writing.

(5) The Appeal Authority will notify the PA Coordinator if the determination is that the record should be amended. The PA Coordinator will promptly advise the requester and the office holding the record to amend the record and to notify all prior recipients of the records for which an accounting was required of the change.

(6) If the determination upholds the initial denial, in whole or in part, the PA Coordinator shall inform the requester:

(i) Of the denial and the reason.

(ii) Of his right to file in NRO records within 60 calendar days a concise statement of the reasons for disputing the information contained in the record. If the requester elects to file a statement of disagreement, the PA Coordinator will be responsible for clearly noting any portion of the record that is disputed and for appending into the file the requester's statement as well as a copy of the NRO's letter to the requester denying the disputed information, if appropriate. The requester's statement and the NRO denial letter will be made available to anyone to whom the record is subsequently disclosed, and prior recipients of the disputed record will be provided a copy of both to the extent that an accounting of disclosures is maintained.

(iii) Of his right to judicial review in U.S. District Court.

(7) The Appeal Authority shall act on the appeal or provide a notice of extension within 30 working days.

#### **§ 326.14 Disclosure of records to person other than subject.**

(a) Personal records contained in a Privacy Act system of records

maintained by NRO shall not be disclosed by any means to any person or agency outside the NRO except with the written consent of the individual subject of the record, unless as provided in this part.

(b) Except for disclosure made to members of the NRO in connection with their official duties and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in NRO systems of records and of all disclosures of investigative information. Accounting entries will record the date, kind of information, purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made. Accounting records will be maintained for at least five years after the last disclosure or for the life of the record, whichever is longer. Subjects of NRO records will be given access to associated accounting records upon request except for disclosures made pursuant to § 326.4, or where an exemption has been properly claimed for the system of records.

#### § 326.15 Fees.

Individuals requesting copies of their official personnel records are entitled to one free copy; a charge will be assessed for additional copies. There is a cost of \$.15 per page. Fees will not be assessed if the cost is less than \$30.00. Fees should be paid by check or postal money order payable to the Treasurer of the United States and forwarded to the Privacy Act Coordinator, NRO, at the time the copy of the record is delivered. In some instances, fees will be due in advance.

#### § 326.16 Penalties.

Each request shall be treated as a certification by the requester that he is the individual named in the request. The Privacy Act provides criminal penalties for any person who knowingly and willfully requests or obtains any information concerning an individual under false pretenses.

#### § 326.17 Exemptions.

(a) All systems of records maintained by the NRO shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically

designated for exemptions herein may contain items of information that have been properly classified.

(b) No system of records within the NRO shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption and the exemption rule for the system of records has been published as a final rule in the **Federal Register**.

(c) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(d) Proposals to exempt a system of records will be forwarded to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, for review and action.

Dated: April 11, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00-9417 Filed 4-14-00; 8:45 am]

**BILLING CODE 5001-10-F**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 00-655; MM Docket No. 99-139; RM-9402, RM-9412]

#### Radio Broadcasting Services; Princeville, Kapaa, and Kalaheo, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of two separate petitioners, Vetter Communications Co., Inc. permittee of Station KAWT, Channel 255C1, Princeville, Hawaii, and B&GRS Partnership permittee of Station KAYI, Channel 260C1, Princeville, Hawaii reallocates Channel 255C1 from Princeville to Kapaa, Hawaii, as the community's first local aural service and reallocates Channel 260C1 from Princeville to Kalaheo, Hawaii. See 64 FR 24566 (May 7, 1999). Each channel can be allotted to its respective community in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction. The reference coordinates for a Channel 255C1 allotment at Kapaa, Hawaii, are 22-04-42 North Latitude and 159-19-19 West Longitude. The reference coordinates for a Channel 260C1 allotment at Kalaheo, Hawaii, are 21-59-54 North Latitude and 159-25-35 West Longitude.

**DATE:** Effective May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99-139, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Princeville, Channels 255C1, and 260C1, and adding in alphabetical order, Kapaa, Channel 255C1, and Kalaheo, Channel 260C1.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-9381 Filed 4-14-00; 8:45 am]

**BILLING CODE 6712-01-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Parts 209 and 230

[FRA Docket No. RSSL-98-1, Notice No. 4]

#### Inspection and Maintenance Standards for Steam Locomotives

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Public meetings on final rule.

**SUMMARY:** On November 17, 1999, FRA published the final rule on inspection and maintenance of steam locomotives (64 FR 62828). The Inspection and

Maintenance Standards for Steam Locomotives, title 49, Code of Federal Regulations (CFR) parts 209 and 230, which took effect on January 18, 2000, sets forth new inspection and implementation requirements. FRA will hold public meetings to explain the implementation schedule and general requirements for inspection and maintenance of steam locomotives under the rule. These meetings will also provide interested parties with the opportunity to discuss the rule and ask questions of the presenters. All parties interested in the new rule on inspection

and maintenance of steam locomotives are invited to attend these meetings.

**DATES:** The meetings will be held on April 26, 2000, at 9 a.m.; May 17, 2000, at 9 a.m.; and June 28, 2000, at 9 am.

**ADDRESSES:** The meetings will be held on April 26, 2000, at the Steamtown National Historic Site, Lackwana & Cliff Street, Scranton, PA 18503; May 17, 2000 at the California State Railroad Museum, 111 I Street, Sacramento, CA 95814; and June 28, 2000 at the Clarion Hotel, 4813 Central Avenue, Hot Springs, AR 71913.

**FOR FURTHER INFORMATION CONTACT:**

George Scerbo, Motive Power & Equipment Specialist, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202-493-6249); or Paul F. Byrnes, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (202-493-6032).

**Michael J. Logue,**

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 00-9402 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-06-P**

# Proposed Rules

Federal Register

Vol. 65, No. 74

Monday, April 17, 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 Part 915

[Docket No. FV00-915-2 PR]

#### Avocados Grown in South Florida; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$0.16 per 55-pound bushel container or equivalent to \$0.19 per 55-pound bushel container or equivalent of avocados handled. The Committee is responsible for local administration of the marketing order, which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

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

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist,

Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable avocados beginning on April 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file 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 law and request a modification of the

order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the 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 his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods from \$0.16 per 55-pound bushel container or equivalent to \$0.19 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999-2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on March 8, 2000, and unanimously recommended 2000-2001 expenditures of \$186,333 and an assessment rate of \$0.19 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were \$164,335. The assessment rate of \$0.19 is \$0.03 higher than the rate currently in effect.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and

efficiency (7 CFR part 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The major expenditures recommended by the Committee for the 2000–2001 year include \$69,000 for salaries, \$35,000 for national enforcement, \$20,000 for research, \$14,898 for employee benefits, and \$13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were \$46,000, \$27,000, \$39,500, \$10,040, and \$8,955, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Commodity shipments for the year are estimated at 900,000 55-pound bushel containers, which should provide \$171,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently \$174,431) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses, section 915.42(a)(2)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those having annual receipts less than \$500,000,000.

The average grower price for fresh avocados during the 1998–99 season was \$17.90 per 55-pound bushel box equivalent for all domestic shipments and the total shipments were 890,859 bushels. Approximately 10 percent of all handlers handled 90 percent of the Florida avocado shipments. Many avocado handlers ship other tropical fruit and vegetable products, which are not included in the Committee's data but would contribute further to handler receipts.

Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado producers also may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from \$0.16 per 55-pound bushel container or equivalent to \$0.19 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2000–2001 expenditures of \$186,333 and an assessment rate of \$0.19 per 55-pound bushel container or equivalent. The proposed assessment rate of \$0.19 is \$0.03 higher than the 1999–2000 rate. The quantity of assessable avocados for the 2000–2001 season is estimated at 900,000 55-pound bushel containers. Thus, the \$0.19 rate should provide \$171,000 in assessment income. Income derived from handler

assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2000–2001 fiscal year include \$69,000 for salaries, \$35,000 for national enforcement, \$20,000 for research, \$14,898 for employee benefits, and \$13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were \$46,000, \$27,000, \$39,500, \$10,040, and \$8,955, respectively.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and efficiency (7 CFR part 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of \$186,333, which include increases in administrative and office salaries, and local and national enforcement. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Alternative expenditure levels were discussed. However, the Committee ultimately determined that the recommended expenditures were appropriate to reflect its increased share of the workload and resource demands. The assessment rate of \$0.19 per 55-pound bushel container or equivalent of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 2000–2001 fiscal year. This is approximately \$11,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2000–2001 season could be close to \$17.90 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2000–2001 fiscal year as a percentage of total grower revenue could be one percent.

This action would increase the assessment obligation imposed on

handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/ moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2000–2001 fiscal period began on April 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

#### PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

##### § 915.235 Assessment rate.

On and after April 1, 2000, an assessment rate of \$0.19 per 55-pound bushel container or equivalent is established for avocados grown in South Florida.

Dated: April 11, 2000.

**James R. Frazier,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–9451 Filed 4–14–00; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Parts 91 and 161

[Docket No. 99–053–1]

#### Origin Health Certificates for Livestock Exported From the United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the animal export regulations to allow origin health certificates issued for animals intended for export from the United States to be valid for longer than 30 days in some cases, based on the requirements of the country of destination. Currently, origin health certificates for animals intended for export from the United States must certify that the animals were inspected within the 30 days prior to the movement for export. They must also contain information about any tests required to be conducted prior to export. Generally, the animals are inspected and tested (or samples are taken for testing) on the same day. However, some countries require or allow testing to be conducted more than 30 days prior to the date of export. This action would allow animals to be inspected for the origin health certificate as early as the required testing or sampling may be performed, in accordance with the requirements of the country of destination. We believe

this can be allowed without increasing the risk of infected or exposed animals being exported, since all livestock leaving the United States by sea or air are inspected again by a U.S.

Department of Agriculture veterinarian within 24 hours of export; and animals exported to Canada or Mexico by land are inspected by those nations prior to crossing the land border. This action would simplify the export process and reduce costs for exporters.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by June 16, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 99–053–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–053–1.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Najam Q. Faizi, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–5256.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 91, “Inspection and Handling of Livestock for Exportation” (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.3 of the regulations provides, among other things, that all animals intended for exportation to a foreign country must be accompanied from the State of origin of the export movement to the port of embarkation or the border of the United States by an origin health certificate. The origin health certificate must certify that the animals were inspected within the 30

days prior to the date of the movement of the animals for export and that they were found to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must be issued by an Animal and Plant Health Inspection Service (APHIS) representative or an accredited veterinarian and must be endorsed by an authorized APHIS veterinarian in the State of origin of the export movement. The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age and, if applicable, must also show registration name and number, natural markings, and acquired markings. The origin health certificate must also include all test results, certifications, or other statements required by the country of destination.

Section 91.3(c) requires that all samples for tests required by the regulations be taken by an inspector or accredited veterinarian in the State of origin of the export movement. Further, § 91.3 requires that the samples be taken and tests made within the 30 days prior to the date of the export movement, with the following exceptions: The Administrator may permit sampling and testing more than 30 days prior to the date of export if required by the receiving country, and the tuberculin test may be conducted within the 90 days prior to the date of the movement of the animals for export.

The provision allowing sampling and tests more than 30 days prior to the date of export if required by the receiving country is intended to cover those cases where the country of destination either allows testing earlier than 30 days prior to the date of export, or requires earlier testing. For example, sometimes the country of destination wishes to test the animals again upon arrival. Since a certain interval of time must elapse between tests, the country requires pre-export testing to be conducted more than 30 days prior to the date of export.

When preparing animals for exportation, exporters normally request the accredited veterinarian or APHIS representative who takes samples for testing to inspect the animals and issue the origin health certificate at the same time. Exporters who have their animals inspected and obtain an origin health certificate more than 30 days prior to the date of export arrive at the port of embarkation or the border with an invalid origin health certificate. This is because, as explained earlier, § 91.3(a) requires the origin health certificate to certify that the animals were inspected within the 30 days prior to the date of export. Exporters must then obtain a

second origin health certificate. The services of an APHIS representative or accredited veterinarian are required, there is a fee for the issuance of the origin health certificate, and the exporter is inconvenienced.

We are proposing to amend the regulations to allow animals to be inspected for the origin health certificate as early as the required sampling or testing may be performed, in accordance with the requirements of the country of destination. Although this change will mean that some animals will be inspected for export in the State of origin more than 30 days prior to export, all animals leaving the country are inspected an additional time. In accordance with § 91.15 of the regulations, all animals leaving the country by sea or air must be inspected by an APHIS veterinarian within 24 hours of embarkation at an export inspection facility at an authorized port. All animals offered for exportation into Mexico or Canada through a land border port are inspected at the border by Mexican or Canadian officials before being authorized entry into Mexico or Canada. Thus, there is another opportunity to inspect the animals for evidence of disease or exposure to disease before they are exported from the United States.

This action would simplify the export process and reduce costs for those exporters who now must secure a new origin health certificate at the port of embarkation or border because they were unaware of the current time limitations for the export certificates.

In conjunction with this proposed amendment, we also propose to amend § 91.3(c). As explained earlier in this document, § 91.3(c) now provides that the Administrator may permit sampling and testing more than 30 days prior to the date of export if required by the receiving country. This wording does not adequately cover cases where a receiving country allows (rather than requires) sampling or testing more than 30 days prior to the date of export. Therefore, we propose to change this language to provide that the Administrator may permit sampling and testing more than 30 days prior to the date of export when required or allowed by the country of destination.

We also propose to amend § 91.3(a) and (c) to replace the phrase "the date of the movement of the animals for export" with "the date of export." We currently use both phrases in § 91.3(a) and (c) in various places. It is not clear from "the date of the movement of the animals for export" whether we mean the date that animals move from their premises of origin to the port of

embarkation or border, or the date the animals move from the port of embarkation or across the border. We mean the latter, and we believe using the term "date of export" consistently will help clarify that.

Further, we propose to amend 9 CFR part 161, "Requirements and Standards for Accredited Veterinarians and Suspension or Revocation of Such Accreditation." Currently, § 161.3(b) states that certificates, forms, records, and reports issued by an accredited veterinarian shall be valid for 30 days following the date of inspection of the animal identified on the document. We propose to amend § 161.3(b) to allow an origin health certificate to be valid for more than 30 days when the Administrator allows the animals to be inspected more than 30 days prior to the date of export in accordance with § 91.3.

#### **Executive Order 12866 and Regulatory Flexibility Act**

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

The regulations currently require all animals intended for exportation from the United States to be accompanied from the State of origin to the port of embarkation or the border of the United States by an origin health certificate. The origin health certificate must be issued by an APHIS representative or an accredited veterinarian. It must certify that the animals were inspected within 30 days of being exported and were found to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must also include all test results, certifications, or other statements required by the country of destination. If required by the country of destination, the Administrator may permit sampling and testing more than 30 days prior to the date of export.

We are proposing to amend part 91 to allow animals to be inspected for the origin health certificate as early as the sampling or testing may be performed. We also propose to amend part 161 to allow an origin health certificate to be valid for more than 30 days when animals are allowed to be inspected more than 30 days prior to the date of movement for export in accordance with § 91.3.

#### **Costs**

Currently, exporters who have their animals inspected and obtain an origin health certificate more than 30 days

prior to the date of export must obtain a new origin health certificate when the animals arrive at the port of embarkation or the border. On average, it costs \$150 to have a veterinarian inspect animals for export and issue an origin health certificate. If this proposal is adopted, the original origin health certificate will still be valid when the animals arrive at the port of embarkation or the border, and the

exporter will not incur the costs of obtaining an additional origin health certificate.

**Live Animal Exports**

United Nations trade data show that U.S. exports of live animals are worth more than half a billion dollars a year (see tables 1 and 2). On average, U.S. exports of live animals from 1993 through 1998 were distributed as follows: More than 40 percent went to

Mexico and Canada, approximately 15.3 percent went to Japan, approximately 2 percent went to Brazil, 1.4 percent went to Turkey, 1.1 percent went to the Republic of Korea (Korea), and less than 1 percent went to Egypt or Taiwan. Of these countries, Brazil, Egypt, Japan, Korea, Taiwan, and Turkey provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin.

TABLE 1.—U.S. EXPORTS OF LIVE ANIMALS  
[In \$1,000]

Year	Mexico	Canada	Brazil	Egypt	Japan	Korea	Taiwan	Turkey	Rest of the world	Total
1993 .....	\$108,679	\$127,058	\$12,339	\$1,337	\$39,667	\$4,777	\$3,116	\$2,339	\$219,615	\$518,927
1994 .....	149,747	146,578	12,415	2,800	47,516	6,740	3,496	1,136	216,924	587,352
1995 .....	31,409	124,974	14,179	2,196	110,646	8,856	2,791	7,689	216,502	519,242
1996 .....	81,119	105,130	10,598	6,362	103,228	7,412	3,236	9,307	206,141	532,533
1997 .....	207,854	104,699	13,358	2,261	108,049	7,975	2,237	2,042	235,364	683,839
1998 .....	140,632	132,178	9,969	5,569	72,156	3,568	1,919	9,616	302,545	678,152

TABLE 2.—U.S. EXPORTS OF LIVE ANIMALS  
[As a percent of total U.S. exports]

Year	Mexico	Canada	Mexico and Canada	Brazil	Egypt	Japan	Korea	Taiwan	Turkey	Brazil, Egypt, Japan, Korea, Taiwan, and Turkey
1993 .....	21	25	45.4	2.4	0.3	7.6	0.9	0.6	0.5	12.3
1994 .....	26	25	50.5	2.1	0.5	8.1	1.1	0.6	0.2	12.6
1995 .....	6	24	30.1	2.7	0.4	21.3	1.7	0.5	1.5	28.2
1996 .....	15.2	19.7	35.0	2.0	1.2	19.4	1.4	0.6	1.7	26.3
1997 .....	30	15	45.7	2.0	0.3	15.8	1.2	0.3	0.3	19.9
1998 .....	21	20	40.2	1.5	0.8	10.6	0.5	0.3	1.4	15.2

Kazakhstan, Turkmenistan, and Uzbekistan also provide for sampling and testing of live animals more than 30 days prior to exportation from the

country of origin. These three Central Asian countries have imported relatively few live animals in the 6-years period from 1993 through 1998 and

none from the United States. Table 3 shows the value of live animals imported into these three countries, based on United Nations data.

TABLE 3.—IMPORTS OF LIVE ANIMALS  
[In \$1,000]

Year	Kazakhstan	Turkmenistan	Uzbekistan	All countries
1993 .....	\$600	\$551	.....	\$8,965,958
1994 .....	29	.....	\$400	9,556,484
1995 .....	427	.....	200	10,020,452
1996 .....	137	.....	200	9,925,704
1997 .....	231	.....	200	8,991,483
1998 .....	433	.....	200	8,991,071

This proposed rule would facilitate live animal exports from the United States to Brazil, Egypt, Japan, Kazakhstan, Korea, Taiwan, Turkey, Turkmenistan, Uzbekistan, and other countries that may allow or require animals to be tested, or samples to be taken for testing, more than 30 days prior to export from the United States. Approximately 19 percent of live animal exports from the United States went to

these countries over the 6-year period from 1993 through 1998. We do not know how many of these shipments were made by small entities. However, all U.S. entities, including small entities, who export live animals to these countries would benefit from this proposal, albeit in a relatively small way, by not having to bear the costs of an additional origin health certificate,

estimated at approximately \$150 per shipment.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Lists of Subjects***9 CFR Part 91*

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

*9 CFR Part 161*

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we propose to amend 9 CFR parts 91 and 161 as follows:

**PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION**

1. The authority citation for part 91 continues to read as follows:

**Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 91.3, paragraph (a) and the second sentence in paragraph (c) would be revised to read as follows:

**§ 91.3 General export requirements.**

(a) All animals intended for exportation to a foreign country, except by land to Mexico or Canada, must be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation by land to Mexico or Canada must be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. The origin

health certificate must certify that the animals were inspected within the 30 days prior to the date of export, except as follows: When the Administrator allows sampling or testing to be done more than 30 days prior to the date of export, in accordance with paragraph (c) of this section, then the animals also may be inspected within that same time period, and the origin health certificate will remain valid for that time period. The origin health certificate must certify that the animals were found upon inspection to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must be endorsed by an authorized APHIS veterinarian in the State of origin and must include any test results added by the authorized APHIS veterinarian pursuant to § 161.3(k) of this chapter (any added test results must be initialed by the authorized veterinarian). The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age and, if applicable, must also show registration name and number, tattoo markings, or other natural or acquired markings. The origin health certificate must include all test results, certifications, or other statements required by the country of destination.

\* \* \* \* \*

(c) \* \* \* The samples must be taken and tests must be made within the 30 days prior to the date of export, except that the Administrator may allow such sampling or testing to be conducted more than 30 days prior to the date of export if required or allowed by the receiving country, and the tuberculin test may be conducted within the 90 days prior to the date of export. \* \* \*

**PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION**

3. The authority citation for part 161 continues to read as follows:

**Authority:** 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.22, 2.80, and 371.2(d).

4. In § 161.3, paragraph (b) would be revised to read as follows.

**§ 161.3 Standards for accredited veterinarian duties.**

\* \* \* \* \*

(b) An accredited veterinarian shall not issue, or allow to be used, any certificate, form, record or report, until, and unless, it has been accurately and

fully completed, clearly identifying the animals to which it applies, and showing the dates and results of any inspection, test, vaccination, or treatment the accredited veterinarian has conducted, except as provided in paragraph (c) of this section, and the dates of issuance and expiration of the document. Certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document, except that origin health certificates may be valid for a longer period of time as provided in § 91.3(a) of this chapter. The accredited veterinarian must distribute copies of certificates, forms, records, and reports according to instructions issued to him or her by the Veterinarian-in-Charge.

\* \* \* \* \*

Done in Washington, DC, this 11th day of April 2000.

**Bobby R. Acord,**

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

[FR Doc. 00–9492 Filed 4–14–00; 8:45 am]

**BILLING CODE 3410–34–P**

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 50****Public Workshop on Risk-Informed Regulation—Option 2**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of workshop.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will host a public workshop to provide an opportunity for discussion of the Nuclear Energy Institute's (NEI) guidance on special treatment requirements, advanced notice of proposed rulemaking, and possible alternative approaches to Option 2 in risk-informed regulations. The workshop is open to the public.

**DATES:** The workshop will be held on Thursday, April 27, 2000, from 9 a.m. to 5 p.m.

**ADDRESSES:** Ramada Inn Bethesda, Room Embassy III, 8400 Wisconsin Avenue, Bethesda, Maryland. The hotel's phone number is (301) 654–1000.

**FOR FURTHER INFORMATION CONTACT:** Egan Y. Wang, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–1076, email eyw@nrc.gov.

**SUPPLEMENTARY INFORMATION:** The discussion topics are tentative and

subject to change. Anyone interested in providing a presentation on these or other related topic(s), please contact Egan Wang at (301) 415-1076. This workshop will provide an opportunity to discuss topics related to Option 2 in risk-informed regulations.

Dated at Rockville, Maryland, this 11th day of March 2000.

For the Nuclear Regulatory Commission.

**Cynthia A. Carpenter,**

*Chief, Generic Issues, Environmental, Financial and Rulemaking Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-9467 Filed 4-14-00; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 63

#### Public Meetings on Issues Associated with the Licensing Process for a Possible High-Level Waste Repository at Yucca Mountain, Nevada

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public meetings in Las Vegas, Nevada and Pahrump, Nevada.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) staff will hold a series of public meetings on the high-level waste repository licensing process. The meetings are intended to foster a common understanding among the stakeholders on issues that would be associated with the licensing process, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. All meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, of the NRC Office of the General Counsel.

The first meeting in the series is an Information Workshop designed primarily for the professional staff of the affected interests. It is open to the public and will begin with an NRC overview of the licensing process, followed by NRC presentations on the role of information management and proceeding support, the role of the NRC technical staff in evaluating the DOE license application, and the NRC inspection process. Opportunities for questions and answers will be provided throughout the workshop. The time, date, and location of the Information Workshop is shown below.

The second meeting in the series is primarily to acquaint the public with the NRC's high-level waste licensing

process. It will begin with an overview of the three topics addressed at the first meeting, followed by a question and answer period. In addition, members of the NRC staff will be available for informal discussion with members of the public. The time, date, and location of the Public Meeting is shown below. The NRC staff plans to hold a third meeting on the licensing process in Washington, DC later this year, and the time, date, and location of the meeting will be announced in the **Federal Register**.

**TIME/DATE:** The Information Workshop will be held on Thursday, May 4, 2000, from 8:00 a.m. to 12:00 noon (Pacific time).

**PLACE:** Clark County Government Center, Gold Room, 4th Floor, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

**TIME/DATE:** The Public Meeting will be held on Thursday, May 4, 2000, from 7:00 p.m. to 9:30 p.m. (Pacific time).

**PLACE:** Mountain View Casino and Bowl, 1750 Pahrump Valley Boulevard, Pahrump, Nevada 89048.

**FOR FURTHER INFORMATION CONTACT:** Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555-0001, or by telephone: (301) 415-1642 or e-mail: fxc@nrc.gov.

**SUPPLEMENTARY INFORMATION:** The NRC's proposed rule can be obtained from the NRC website (<http://www.nrc.gov/NMSS/DWM/hlwreg.html>), or by contacting Ms. Judy Goodwin at (301) 415-5870 or via e-mail at [jcg@nrc.gov](mailto:jcg@nrc.gov). Copies of the rule will also be available at the meetings.

Dated at Rockville, Maryland this 11th day of April, 2000.

For the Nuclear Regulatory Commission.

**C. William Reamer,**

*Chief, High-Level Waste and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00-9464 Filed 4-14-00; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-356-AD]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-120 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-120 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics.

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

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-356-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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.

**FOR FURTHER INFORMATION CONTACT:** Robert Capezutto, Aerospace Engineer, Systems and Flight Test Branch, ACE-

116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703-6071; fax (770) 703-6097.

#### 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-356-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-356-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER EMB-120 series airplanes. The DAC advises that, in the event of the loss of the green hydraulic system pressure, if the present Airplane Flight Manual (AFM) "Free-Fall" operational procedure is not followed, there is a possibility that the landing gear doors may not open. Investigation revealed that blockage of the doors may occur due to the energizing of the landing gear door selector valve in the

absence of hydraulic fluid. (The spool valve may not shift completely and may result in trapped fluid in the door's closure line.) This condition, if not corrected, could result in the landing gear doors becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics.

##### FAA's Determination

In light of this information, the FAA finds that certain cautionary statements should be included in the FAA-approved AFM to ensure that correct procedures are followed in the event of a loss of hydraulics. The FAA has determined that the procedures currently may not be defined adequately in the AFM for these airplanes.

##### Explanation of Relevant Service Information

Empresa Brasileira de Aeronautica S.A. (EMBRAER) has issued Service Bulletin 120-32-0077, Change 02, dated December 23, 1997, which describes procedures for installation of hydraulic tube assemblies incorporating a check valve. For airplanes already equipped with those check valves, the service bulletin describes procedures for a visual inspection to detect the check valve flow direction, and reorientation of the valve, if installed incorrectly. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 97-05-03R2, dated March 16, 1998, in order to assure the continued airworthiness of these airplanes in Brazil. The installation of hydraulic tube assemblies incorporating a check valve is intended to modify the hydraulic system to make the landing gear "Free-Fall" system more tolerant to operational variations from AFM procedures. The Brazilian AD also mandates incorporation of an AFM revision of abnormal landing gear extension procedures.

##### FAA's Conclusions

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

##### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require incorporation of a revision to the "Emergency Procedures" and "Abnormal Procedures" sections of the FAA-approved AFM. This revision includes cautionary statements to ensure that correct procedures are followed in the event of a loss of hydraulics. The AD would also require accomplishment of the actions specified in the service bulletin described previously.

##### Differences Between Proposed Rule and Brazilian Airworthiness Directive

The proposed AD differs from the parallel Brazilian airworthiness directive. This proposed AD would require the check valve installation within 2,000 flight hours after the effective date of the AD, whereas the original version of the Brazilian airworthiness directive mandated the installation within 400 hours after the effective date of that AD. The 2,000-flight-hour interval generally corresponds to a "C-check" maintenance period for the EMBRAER EMB-120. The FAA finds that a 2,000-flight-hour compliance time provides an adequate level of safety, and will allow operators to accomplish the installation at the next "C-check."

The Brazilian airworthiness directive mandates incorporation of a specific revision level for each of five different AFM's. Of these five, only AFM 120/794 is applicable to U.S.-registered airplanes. Thus, the proposed AD would mandate incorporation of Revision 45 to AFM 120/794.

##### Cost Impact

The FAA estimates that 213 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to incorporate the applicable AFM revision, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be \$12,780, or \$60 per airplane.

The FAA estimates that it would take approximately 1 work hour per airplane to perform the visual inspection of the check valve, 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 \$60 per airplane.

The FAA estimates that it would take approximately 2 work hours per airplane to install the hydraulic tube assemblies incorporating a check valve, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$2,021 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be \$2,141 per airplane.

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

### Regulatory Impact

The regulations proposed herein would not have 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket 99-NM-356-AD.

*Applicability:* Model EMB-120 series airplanes as listed in EMBRAER Service Bulletin 120-32-0077, Change 02, dated December 23, 1997; 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 (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 the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics, accomplish the following:

(a) Within 10 flight hours after the effective date of this AD, revise the "Emergency Procedures" and "Abnormal Procedures" sections of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of EMB-120 AFM 120/794, Revision 45, dated October 14, 1996.

(b) For airplanes on which the check valve has been installed in accordance with EMBRAER Service Bulletin 120-32-0077, dated February 7, 1997: Within 100 hours after the effective date of this AD, conduct a visual inspection to detect the check valve flow direction in accordance with Service Bulletin 120-32-0077, Change 02, dated December 23, 1997. If the check valve is installed incorrectly, prior to further flight, reinstall the check valve in the proper position in accordance with Change 02 of the service bulletin.

(c) For airplanes on which the check valve has not been installed in accordance with EMBRAER Service Bulletin 120-32-0077, dated February 7, 1997; or Change 01, dated September 25, 1997; or Change 02, dated December 23, 1997: Within 2,000 flight hours after the effective date of this AD, install hydraulic tube assemblies incorporating a check valve in accordance with Service Bulletin 120-32-0077, Change 01, dated September 25, 1997; or Change 02, dated December 23, 1997.

### 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, 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 2:** 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

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

**Note 3:** The subject of this AD is addressed in Brazilian airworthiness directive 97-05-03R2, dated March 16, 1998.

Issued in Renton, Washington, on April 11, 2000.

**Donald L. Riggins,**

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

[FR Doc. 00-9556 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000-NM-49-AD]

RIN 2120-AA64

### Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration. This proposal would require a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. This proposal also would require, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This proposal is prompted by the FAA's determination that certain main deck

cargo door systems do not provide an adequate level of safety, and that there is no means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions specified by the proposed AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

**DATES:** Comments must be received by June 1, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-49-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5320; fax (562) 627-5210.

**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 2000-NM-49-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. 2000-NM-49-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

Supplemental Type Certificates (STC) SA1063SO and SA1377SO [originally issued to Aeronautical Engineers, Inc. (AEI)] specify a design for installation of a main deck cargo door, associated door cutout in the fuselage, door hydraulic and indication systems, and Class "E" cargo interior with a cargo barrier on McDonnell Douglas Model DC-8 series airplanes. STC SA1063SO installs the main deck cargo door and associated hydraulic and indication systems. STC SA1377SO installs the Class "E" interior with a cargo barrier, a cargo handling system, and a 9g crash barrier. The FAA has conducted a design review of Model DC-8 series airplanes modified in accordance with STC's SA1063SO and SA1377SO and has conducted discussions regarding the design with the STC holder. From the design review and these discussions, the FAA has identified several potential unsafe conditions. [Results of this design review are contained in "DC-8 Cargo Modification Review Team, Review of AEI Supplemental Type Certificates SA1063SO—Installation of a Cargo Door and SA1377SO—Installation of a Cargo Interior, Final Report, dated July 30, 1999," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket for this NPRM.]

For airplanes modified in accordance with STC SA1063SO, this NPRM proposes corrective actions for those potential unsafe conditions that relate to the hydraulic and indication systems of the main deck cargo door and a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked. These conditions, if not corrected, could result in opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

**Other Related Rulemaking**

The FAA is considering further rulemaking to address the remaining potential unsafe conditions on Model DC-8 series airplanes modified in accordance with STC SA1063SO that

relate to the main deck cargo door hinge and fuselage structure in the area modified by installation of a main deck cargo door. In addition, the FAA is considering further rulemaking to address the potential unsafe conditions on Model DC-8 series airplanes modified in accordance with STC SA1377SO that relate to the unreinforced main deck floor, 9g crash barrier, and fire/smoke detection system.

**Main Deck Cargo Door Systems**

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing Model 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC-9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap shortly after the airplane was in flight, these two accidents served to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783-1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the managers of the Transport Airplane Directorate (TAD) and Los Angeles,

Seattle, and Atlanta Aircraft Certification Offices (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Utilizing the applicable requirements of Civil Air Regulations (CAR) part 4b and the design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including McDonnell Douglas Model DC-8 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's and NPRM:

- For certain McDonnell Douglas Model DC-9 series airplanes: AD 89-11-02, amendment 39-6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90-09-06, amendment 39-6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC-8 series airplanes: AD 89-17-01 R1, amendment 39-6521 (55 FR 8446, March 8, 1990);
- For certain Boeing Model 747-100 and -200 series airplanes: AD 96-01-51, amendment 39-9492 (61 FR 1703, January 23, 1996);
- For certain Boeing Model 727-100 and -200 series airplanes: AD 96-16-08, amendment 39-9708 (61 FR 41733, August 12, 1996);
- For certain McDonnell Douglas Model DC-8 series airplanes: NPRM Rules Docket No. 99-NM-338-AD (64 FR 72689, December 22, 1999); and
- For certain McDonnell Douglas Model DC-8 series airplanes: NPRM Rules Docket No. 2000-NM-01-AD (65 FR 7796, February 16, 2000).

In late 1997, the FAA informed the STC holders and operators of Model DC-8 series airplanes that it was embarking on a review of Model DC-8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration by STC. The FAA proposed at a subsequent industry sponsored meeting in early 1998, that DC-8 operators and STC holders work together to identify and

address potential safety concerns. This suggestion to the affected industry resulted in the creation of the DC-8 Cargo Conversion Joint Task Force (JTF) (hereinafter referred to as "the JTF").

The current composition of the JTF includes holders of each of the six STC's that addresses the installation of a main deck cargo door in Model DC-8 series airplanes and operators and lessors of those modified airplanes. At the JTF's request, the FAA participates in its meetings to offer counsel and guidance with respect to the FAA's regulatory processes. The JTF is a clearinghouse for the gathering and sharing of information among the parties affected by the FAA review of STC cargo conversions of Model DC-8 series airplanes. The JTF also is a liaison between the FAA, operators, and STC holders.

The JTF has been working with the FAA to provide data relating to the number of STC modified Model DC-8 series airplanes and operators of those airplanes, and identified which airplanes are modified by each STC. It also was instrumental in polling the operators and providing maintenance schedules and locations to the FAA, which helped the FAA arrange visits to operators of airplanes modified by each of the STC's. These visits allowed the FAA to review both the available data supporting each STC and modified airplanes and to identify potential safety concerns with each of the STC modifications. Additionally, the JTF has coordinated funding of the industry review of the data supporting the STC's and ongoing efforts to resolve safety issues identified by the FAA.

Using the applicable requirements of CAR part 4b and the criteria specified in the FAA Memorandum as evaluation guides, the FAA, in collaboration with the JTF, conducted an engineering design review and inspection of an airplane modified in accordance with STC SA1063SO. The FAA identified a number of design features of the main deck cargo door systems of STC SA1063SO that are unsafe and do not meet the applicable requirements of CAR part 4b or the criteria specified in the FAA Memorandum. These systems include the door indication and hydraulic systems. The FAA design review team also determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC SA1063SO, the FAA considers the following five specific design deficiencies of the main deck cargo door systems to be unsafe:

### 1. Indication System

The main deck cargo door indication system for STC SA1063SO utilizes door warning lights at the door operator's control panel and the flight engineer's panel. The warning lights do not indicate either the door open or closed status, or latch or lock status. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as currently designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight.

The light on the flight engineer's panel is labeled "Cargo Door" and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of or misinterpret an unsafe condition and could fail to respond in the correct manner. The warning lights have a "Press-to-Test" feature which is adequate to check the light bulb functionality, but is not adequate to check the cargo door closed, latched, and locked functions. Therefore, an indicator light that monitors all three conditions (*i.e.*, door closed, latched, and locked) must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

During an FAA review of STC modified airplanes, instances of distress of the wire bundle between the fuselage and main deck cargo door and the associated attach hardware were noted. Therefore, a one-time general visual inspection of this area to detect crimped, frayed, or chafed wires is necessary to ensure the electrical continuity of the existing door indication system during the interim period.

### 2. Means to Visually Inspect the Locking Mechanism

The locking system of STC SA1063SO consists of a lock pin installed at one of the seven latches of the main deck cargo

door. The single view port of the main deck cargo door installed in accordance with STC SA1063SO monitors the position of the torque tube that actuates the door latches, but does not provide a means to ensure the position of the lock pin. Therefore, a means to visually inspect the door locking mechanism must be installed to ensure that the door is fully closed, latched, and locked.

As discussed in the ATA Final Report and the FAA Memorandum, there should be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

### 3. Means to Prevent Pressurization to an Unsafe Level

McDonnell Douglas Model DC-8 series airplanes modified in accordance with STC SA1063SO are not equipped with a means to prevent pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not fully closed, latched, and locked. Therefore, such a means must be installed.

### 4. Powered Lock Systems

STC SA1063SO utilizes a nose gear squat switch to remove power (*i.e.*, electrical and hydraulic) from the door control master switch while the airplane is in flight. Latent failure of the squat switch together with other latent and/or single point failures could precipitate inadvertent door openings. Therefore, a means to remove power from the door controls must be installed to prevent inadvertent opening of the main deck cargo door in flight.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

### 5. Lock Strength

Analysis of the existing latching and locking mechanism of the main deck cargo door indicates that in the event of a system jam, continued operation of the hydraulic cylinders could result in structural deformation of elements of the latching and locking mechanisms. Structural deformation of the locking mechanism could result in the single door latch equipped with a lock not being locked and consequent erroneous indication to the pilots that the latch is locked properly. Further, the FAA has determined that a lock on a single latch is inadequate to provide the level of safety envisioned by the applicable certification requirements. Therefore, the latching and locking systems for the

main deck cargo door must be modified to prevent structural deformation, which could result in incorrect indication to the pilots that the door is not fully closed, latched, and locked.

### Explanation of Requirements of Proposed Rule

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, the proposed AD would require, within 60 days after the effective date of this AD, a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; a general visual inspection for damaged, loose, or missing hardware mounting components; and repair, if necessary. These actions would be required to be accomplished in accordance with FAA-approved maintenance procedures.

The proposed AD also would require, within 60 days after the effective date of the AD, a revision of the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1063SO by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane; and installation of any associated placards. These actions would be required to be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

The proposed AD also would require, within 18 months after the effective date of this AD, the following actions:

- Modification of the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;
- Modification of the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of the elements of the door latching and locking mechanisms;
- Installation of a means to visually inspect the locking mechanism of the main deck cargo door;
- Installation of a means to remove power to the door while the airplane is in flight; and
- Installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

The modifications and installations would be required to be accomplished in accordance with a method approved

by the Manager, Los Angeles ACO. Accomplishment of the modifications and installations would constitute terminating action for the inspections, AFMS revision, and associated placards described previously.

### Cost Impact

There are approximately 15 Model DC-8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the general visual inspections, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the general visual inspections proposed by this AD on U.S. operators is estimated to be \$660, or \$60 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the AFMS revision and installation of associated placards, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the AFMS revision and installation of associated placards proposed by this AD on U.S. operators is estimated to be \$660, or \$60 per airplane.

The FAA estimates that it would take approximately 210 work hours per airplane to accomplish the modification required by paragraph (c) of the proposed AD, at an average labor rate of \$60 per work hour. The FAA also estimates that required parts would cost approximately \$45,000 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be \$633,600, or \$57,600 per airplane.

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

### Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**McDonnell Douglas:** Docket 2000–NM–49–AD.

**Applicability:** Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying (“freighter”) configuration in accordance with Supplemental Type Certificate (STC) SA1063SO; 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

#### Actions Addressing the Main Deck Cargo Door

(a) Within 60 days after the effective date of this AD, accomplish a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; and perform a general visual inspection for damaged, loose, or missing hardware mounting components. If any crimped, frayed, or chafed wire, or damaged, loose, or missing hardware mounting component is detected, prior to further flight, repair in accordance with FAA-approved maintenance procedures.

**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.”

(b) Within 60 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1063SO by inserting therein procedures to ensure that the main deck cargo door is fully closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFMS revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

#### Actions Addressing the Main Deck Cargo Door Systems

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;

(2) Modify the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of elements of the door latching and locking mechanism;

(3) Install a means to visually inspect the locking mechanism of the main deck cargo door;

(4) Install a means to remove power to the door while the airplane is in flight;

(5) Install a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

(d) Compliance with paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD, and the AFMS revision and placards may be removed.

#### 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 ACO. 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 Permit

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

#### Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

##### “(1) Indication System:

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

##### (2) Means to Visually Inspect the Locking Mechanism:

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

##### (3) Means to Prevent Pressurization:

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

##### (4) Lock Strength:

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on April 11, 2000.

**Donald L. Riggan,**

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

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

RIN 3038-AB53

#### Public Reporting by Operators of Certain Large Commodity Pools

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed regulations.

**SUMMARY:** In April of 1999, the President's Working Group on Financial Markets (comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission) (the "PWG") issued a report entitled "Hedge Funds, Leverage, and the Lessons of Long Term Capital Management: Report of The President's Working Group on Financial Markets" (the "PWG Report"). This report reviewed the events surrounding the near-collapse of Long Term Capital Portfolio, L.P.

The PWG Report contained eight recommendations. The first was that "more frequent and meaningful information on hedge funds should be made public" and the fourth was that "regulators should encourage improvements in the risk management systems of regulated entities." In furtherance of the first objective, the report specifically recommended that commodity pool operators ("CPOs") of large commodity pools should file quarterly reports, that these reports should "include more meaningful and

comprehensive measures of market risk" such as "value at risk" and that these reports be published.

Consistent with this unanimous recommendation of the PWG, the Commission is proposing new Rule 4.27, which would require the CPOs of the largest commodity pools to provide to the Commission the specified aggregate financial and risk information on a quarterly basis. In order to provide context for the evaluation of this information, these CPOs would also be required to provide certain summary information about their risk management systems and practices.

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

**ADDRESSES:** Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155—21st Street, NW, Washington, DC 20581; transmitted by facsimile to (202) 418-5521; or transmitted electronically to (*secretary@cftc.gov*). Reference should be made to "Public Reporting by Operators of Certain Large Commodity Pools".

**FOR FURTHER INFORMATION CONTACT:**

Robert B. Wasserman, Associate Director at *rwasserman@cftc.gov*, Tobey Kaczensky, Special Counsel at *tkaczensky@cftc.gov*, or James L. Carley, Attorney at *jcarley@cftc.gov*, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155—21st Street, NW., Washington, DC. 20581, Telephone (202) 418-5430.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The events in 1998 involving highly leveraged hedge funds, particularly the near collapse of Long Term Capital Portfolio, L.P. ("LTCM"), raised concerns that problems at one such financial institution, under certain circumstances, could be transmitted to other financial institutions and pose material systemic risks to the financial system of the United States and to international financial systems. In the months following these events, the President's Working Group on Financial Markets (the "PWG") conducted a study of the events and their policy implications and, in April of 1999, issued "Hedge Funds, Leverage, and the Lessons of Long Term Capital Management: Report of The President's Working Group on Financial Markets" (the "PWG Report").<sup>1</sup>

<sup>1</sup> As noted above, the President's Working Group on Financial Markets is comprised of the Secretary of the Treasury, the Chairman of the Board of

The PWG Report stated that the "primary mechanism that regulates risk taking by firms in a market economy is the market discipline provided by creditors, counterparties (including financial contract counterparties), and investors."<sup>2</sup> The report observed, however, that "market discipline tends to be effective only when creditors have the incentives and the means to evaluate the riskiness of the firm."<sup>3</sup> The report concluded that investors and counterparties had "exercised minimal scrutiny of its risk management practices and [its] risk profile" and were "almost certainly not adequately aware" of the "nature of the exposures and risks [LTCM] had accumulated."<sup>4</sup> The report attributed this "insufficient monitoring" to "LTCM's practice of disclosing only minimal information" about itself that "did not reveal meaningful details about [its] risk profile."<sup>5</sup>

Thus, the members of the PWG unanimously recommended that "more frequent and meaningful information on hedge funds should be made public"<sup>6</sup> and that the public disclosures should include risk information. Specifically, the report recommended that: (i) registered CPOs operating large funds begin filing with the Commission quarterly, rather than annual, reports of financial information; (ii) in addition to traditional financial statements, these reports include more "meaningful and comprehensive measures of market risk (e.g., value at risk or stress test results), without requiring the disclosure of proprietary information on strategies or positions;"<sup>7</sup> and (iii) these reports be published. Separately, the report recommended that "regulators should encourage improvements in the risk management systems of regulated entities."<sup>8</sup>

With respect to hedge funds that are not currently registered as CPOs, the PWG Report recommended that "a means for disclosure should be developed to ensure that similar financial information is provided to the public" but recognized that "Congress

Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission. A number of other federal agencies participated in the study, including the Council of Economic Advisers, the Federal Deposit Insurance Corporation, the National Economic Council, the Federal Reserve Bank of New York, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

<sup>2</sup> PWG Report at 25.

<sup>3</sup> Id.

<sup>4</sup> Id at 15.

<sup>5</sup> Id.

<sup>6</sup> Id at 31.

<sup>7</sup> PWG Report at 32-33.

<sup>8</sup> Id at 34.

would need to enact legislation that authorizes mechanisms for [such] disclosure.”<sup>9</sup> On September 23, 1999, Representative Richard Baker of Louisiana introduced a bill which would require unregulated hedge funds to report certain financial and risk information to the Federal Reserve Board. As amended on March 16, 2000, and referred by the Subcommittee on Capital Markets to the full Committee on Banking and Financial Services, this legislation would require each such hedge fund or family of such hedge funds with total assets of \$3 billion or net assets of \$1 billion to report to the Board on a quarterly basis both “[m]eaningful and comprehensive financial information (such as a complete set of financial statements \* \* \*)” and “[m]eaningful and comprehensive measures of risk (such as value-at-risk or stress test results).”<sup>10</sup>

In advocating the reporting of risk, as well as financial information, the PWG report pointed out that financial leverage, particularly when measured by balance sheet leverage, does not by itself provide an adequate measure of risk because “for any given balance sheet leverage ratio, the fragility of a portfolio depends on the market, credit, and liquidity risks in the portfolio.”<sup>11</sup> Financial information should be supplemented with a “statistical measure” such as “value-at-risk relative to net worth,” which would “produce a more meaningful description of leverage in terms of risk.”<sup>12</sup>

The PWG believes that improving the transparency of the risk profiles of hedge funds would help other market participants make more informed judgments about market integrity and the creditworthiness of borrowers and counterparties. Secretary of the Treasury Lawrence Summers recently noted that the public sector “can help to enhance the effectiveness of market discipline by creating an environment of greater transparency and disclosure. \* \* \* [A]gencies should continue to apply the recommendations of the [PWG Report] that are designed to enhance the monitoring of leverage and risk, and to improve transparency, especially the steps to increase reporting by the largest hedge funds. \* \* \*”<sup>13</sup>

Moreover, the PWG has not been the only group to recognize these advantages of greater public disclosure. The PWG’s recommendations have met

with the approval of international financial regulators. The International Organization of Securities Commissioners (IOSCO) released a report last November which stated that:

“The [hedge fund] information gap can, in principle, be addressed through greater public disclosure to permit market participants to assess [hedge fund] risks independently \* \* \*. Market participants might use additional information \* \* \* for a number of purposes, including making more informed decisions with respect to the pricing of transactions and the proper assessment of risks and returns inherent in investment and trading decisions.”<sup>14</sup>

Similarly, the Financial Stability Forum, a group consisting of the U.S. Treasury and the Federal Reserve Bank of New York as well as the Basel Committee on Banking Supervision, IOSCO and financial regulators from the UK, France, Germany, Australia, Italy, and Hong Kong, released in March a report which stated that:

“The [FSF] Working Group firmly supports the objective of enhancing public disclosure by HLIs [highly leveraged institutions, or, hedge funds] and endorses U.S. efforts to achieve this through both regulation and legislation.”<sup>15</sup>

The FSF Report went on to state that “[t]he Working Group agrees [with the PWG and IOSCO] that enhanced public disclosure by HLI’s would be desirable.”<sup>16</sup>

The regulations proposed today are intended to implement the PWG Report recommendations discussed above, and are consistent with the recommendations of the IOSCO Hedge Fund Report and the FSF Report. As described more fully below, they would require operators of the largest commodity pools to file, with respect to each pooled investment vehicle under their direct or indirect control, including vehicles which are not commodity pools, (1) an initial report that would provide summary descriptions of key aspects of their risk management practices, and (2) quarterly reports that would disclose both financial information and information about the exposure of the pool to market risk over the course of the quarter (but that would not reveal positions or trading strategies).

<sup>14</sup> “Hedge Funds and Other Highly Leveraged Institutions—Report of the Technical Committee of the International Organization of Securities Commissioners,” November 1999 (hereinafter the “IOSCO Hedge Fund Report”) at 24–25.

<sup>15</sup> “Report of the Working Group on Highly Leveraged Institutions” (hereinafter the “FSF Report”) at 3.

<sup>16</sup> *Id.* at 31.

## II. The Hedge Fund Reporting Regulation—Proposed Regulation 4.27

### A. Persons Required To Report

#### 1. Size and Leverage Thresholds

Proposed Section 4.27(b) would define a reporting person as a commodity pool operator that controls one or more pools where, at the end of a quarter, either (a) the controlled assets of such pool or pools total three billion dollars (\$3,000,000,000) or greater or (b) the controlled net assets of such pool or pools total one billion dollars (\$1,000,000,000) or greater. These thresholds are intended to limit the reporting requirement to the CPOs of funds whose activities potentially could have systemic risk effects. Any person which has met these thresholds at the end of any of the past three quarters is included as a reporting person in order to ensure a reasonable continuation of coverage of hedge funds which may be experiencing problems. Based on financial filings received pursuant to existing rules, the Commission believes that approximately twenty-five pool operators would be required to report under the proposed rule.

The Commission requests comment on whether these criteria for “reporting persons” are appropriate and whether other criteria should be applied.

#### 2. The Effect of Current Exemptions

##### a. Pools Limited to Sophisticated Investors—Rules 4.7, 4.8 and 4.12(b)

Participation in many of the funds that would be subject to proposed Rule 4.27 is limited to large, sophisticated investors that are generally considered to need less protection than other customers. Pursuant to Rules 4.7, 4.8, and 4.12(b), these funds may be exempted from specified provisions of other Part 4 rules.<sup>17</sup> In contrast to other rules under Part 4, however, Rule 4.27 is not intended primarily as a means of customer protection. Rather, the regulation is intended to facilitate the exercise of market discipline by other market participants in their dealings with hedge funds that, because of their size, could potentially have systemic risk effects. The importance of facilitating market discipline, to the benefit of counterparties and the market at large, is independent of the sophistication of the investors in any particular pool. Accordingly, the proposed rule does not exempt funds from the provisions of Rule 4.27 on the grounds that participation in such funds

<sup>17</sup> Commission regulations referred to herein are found at 17 CFR Ch. 1 *et. seq.* (1999).

<sup>9</sup> *Id.* at 33.

<sup>10</sup> H.R. 2924, 106th Cong., 1st Sess. (2000).

<sup>11</sup> PWG Report at 24.

<sup>12</sup> *Id.*

<sup>13</sup> Remarks presented to the Futures Industry Association on March 17, 2000.

is limited to large, sophisticated investors.

*b. Pools That Have Received Exemptions on a Case by Case Basis*

Rule 4.12(a) permits the Commission to “exempt any person or any class or classes of persons from any provision of this Part 4 if it finds that the exemption is not contrary to the public interest.” A number of persons have received such exemptions on the grounds that participants in their pools are not in need of customer protections provided by the Part 4 rules. Most of these persons manage funds that would fall below the size threshold of Rule 4.27. However, for the reasons stated above, no person that controls any pool or pools that satisfy the thresholds of Section 4.27(b) and that has obtained relief pursuant to Rule 4.12(a) prior to the effective date of these rules will be exempt from Rule 4.27 by virtue of such relief. No person that obtains relief pursuant to Rule 4.12(a) in accordance with a Commission order or an exemptive letter issued subsequent to the effective date of these rules will be exempt from Rule 4.27 unless such order or letter expressly exempts such person from Rule 4.27.

*c. Entities Excluded From the Definition of Commodity Pool*

Rule 4.5 excludes certain entities from the definition of commodity pool operator on the grounds that they are otherwise regulated.<sup>18</sup> These entities include investment companies, insurance companies, banks, trust companies, and fiduciaries and employers subject to ERISA.<sup>19</sup> Proposed Rule 4.27, by its terms, would only apply to commodity pool operators. Therefore, entities excluded from the definition of commodity pool operator pursuant to Rule 4.5 would not be required to file reports under proposed Rule 4.27.

*B. Reporting Requirements*

Each reporting person would file two types of reports: (i) An initial set of qualitative descriptions of its risk management practices and (ii) quarterly reports disclosing quantitative financial and risk exposure information. The initial descriptions would be filed concurrently with the first quarterly report; thereafter, revised responses that reflect material changes, if any, to the initial descriptions would be filed

concurrently with subsequent quarterly reports. Each quarterly report would be filed not later than thirty days after the end of each quarter.

As noted above, the discipline exercised by other market participants can provide a critical means of controlling excessive leverage and, thus, constraining the added market, credit, and funding liquidity risks generated thereby. Public disclosure of the information collected under this rule should help other market participants to make more informed judgments and to more effectively exercise market discipline. This discipline is expected to both constrain excessive leverage of reporting persons and encourage reporting persons to adopt best practices in risk management as such evolve within the industry. Accordingly, the Commission is proposing to disclose publicly both the initial descriptions and the quarterly reports.<sup>20</sup> Section 4.27(f). The Commission intends to make this information available over the Internet within one business day after receipt. Thus, the Commission effectively would serve as a conduit for transmitting this information to the public.

Discussions of the quantitative financial and risk information proposed to be reported on a quarterly basis are presented in sections 1 and 2 below, respectively. The qualitative risk management information to be reported initially is discussed in section 3. Specific filing and attestation requirements are set forth in section 4, while definitional matters are discussed in section 5.

*1. Quarterly Reporting of Financial Information Under Rule 4.27*

Market discipline can only serve as an effective check upon excessive leverage if other market participants can obtain meaningful information about a reporting person’s financial condition on a reasonably timely basis. The PWG Report observed that “[c]urrently, the scope and timeliness of information made available about the financial activities of hedge funds are limited.”<sup>21</sup> As noted above, the first of its recommendations was that “[h]edge funds should be required to disclose additional, and more up-to-date,

information to the public” and that CPOs should file “quarterly reports rather than annual reports.”<sup>22</sup>

Accordingly, consistent with the PWG Report’s recommendations, Section 4.27(d)(1) of the proposed rule would require each reporting person to report on a quarterly basis certain key financial information for each pool under its control, including statements of income, financial condition, changes in financial position, and changes in net asset value.

*2. Quarterly Reporting of Risk Exposure Information Under Rule 4.27*

Leverage has been described within the hedge fund industry not as an independent source of risk but, rather, as “a factor that influences the rapidity with which changes in market risk, credit risk or liquidity risk factors” create losses.<sup>23</sup> It has been noted that “the market risk inherent in a [hedge fund], coupled with the constraints imposed by funding liquidity, make the amplifying effect of leverage of particular concern to [hedge fund managers].”<sup>24</sup> The PWG emphasized that leverage is not an adequate measure of risk because “for any given balance sheet leverage ratio, the fragility of a portfolio depends on the market, credit, and liquidity risks in the portfolio.”<sup>25</sup>

Accordingly, the Commission believes that, in order to fairly portray the risk profile of reporting persons, the quarterly financial information discussed above should be supplemented with certain quantitative risk information. Currently, the most widely accepted methodology of calculating exposure to market risk is value-at-risk (also called “capital-at-risk”). Value-at-risk is calculated using statistical techniques, and represents the largest dollar loss<sup>26</sup> which is expected to be suffered over a given investment horizon or “holding period” (for example, one day or ten days) with a given degree of certainty or “confidence level” (for example, 95% or 99.6%).<sup>27</sup> Because it is expressed in dollars, value-at-risk for a particular entity can be compared over time and, in some circumstances, across multiple entities

<sup>22</sup> *Id.*

<sup>23</sup> Caxton Corporation, Kingdon Capital Management, LLC, Moore Capital Management, Inc., Soros Fund Management, LLC, and Tudor Investment Corporation, “Sound Practices for Hedge Fund Managers,” February 2000 at 1-1 and 1-2 (hereinafter the “Industry Sound Practices report”).

<sup>24</sup> *Id.*

<sup>25</sup> PWG Report at 24.

<sup>26</sup> As used herein, the term “loss” means any adverse change in the value of a pool’s portfolio, whether realized or unrealized. See *infra* at 20.

<sup>27</sup> Value-at-risk can, of course, be measured in any currency.

<sup>20</sup> Section 8(a)(1) of the Commodity Exchange Act, 7 U.S.C. 12(a)(1), provides that “the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The disclosure called for by proposed Rule 4.27 is of aggregate information which would not require the disclosure of information covered by Section 8(a)(1).

<sup>21</sup> PWG Report at 32.

<sup>18</sup> See 50 FR 15868 (April 23, 1985).

<sup>19</sup> The Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001-1381 (1982), as amended by the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No 96-364, 94 Stat. 1208 (1980).

(for example, when all such entities compute value-at-risk using the same confidence level and holding period). Most importantly, value-at-risk incorporates correlations among positions in the portfolio without revealing the positions themselves; it does not compromise the confidentiality of a firm's trading strategies.

The methodology commonly understood as "value-at-risk" may, in the future, be replaced by some other method of measuring of market risk. Indeed, one or more reporting persons may already have developed such an alternative method. Accordingly, for purposes of proposed Rule 4.27 and in the discussion below, the term "VAR" shall mean any measure of exposure to market risk, including value-at-risk, that can be expressed in dollars and that represents the amount that a pool's losses during a stated period are expected not to exceed, with a stated degree of certainty.

VAR would complement traditional balance sheet measures of leverage by giving other market participants insight into the magnitude of the firm's exposure to losses. Under Section 4.27(d)(2)(i), each reporting person would be required to report for each pool under its control the highest, lowest, and ending VAR calculated during the reporting period at each confidence level and holding period for which VAR is normally calculated by the reporting person. However, as further discussed below, the proposed rule would not require disclosure of stress test results so as not to discourage reporting persons from conducting the most rigorous stress tests.<sup>28</sup> Some reporting persons may conduct stress testing by calculating VAR at extremely high confidence levels. Accordingly, no reporting person would be required to report VAR calculated at a confidence level in excess of 99.6%. (This is the confidence level corresponding to a VAR not expected to be exceeded more often than once in a year of 250 trading days).

A matrix of VAR results (e.g., for 95%, 98%, and 99.6% confidence levels) would be more informative than a single result. Accordingly, the proposed rule requires disclosure of the highest, lowest, and ending VAR at each confidence level and holding period for which VAR is calculated by the reporting person. The Commission is aware, however, that this approach might be more burdensome than requiring, for example, results at the single highest confidence level for which VAR is calculated. The

Commission invites comment on the best approach to take in this regard.

Under Section 4.27(d)(2)(ii), each reporting person would be required to report for each holding period for which it calculates VAR the frequency during the quarter with which losses for each pool under its control exceeded the corresponding VAR for such pool (at the highest confidence level calculated not exceeding 99.6%). Each reporting person would also be required to report the dollar magnitude of the greatest loss experienced by each pool during the quarter. The importance of examining the magnitude, as well as the frequency, of losses in excess of VAR is exemplified by the recommendation of one group of hedge fund managers that "[e]ven if the frequency of changes in value in excess of that generated by the market risk model is within the expected range, if the observed change in the value of the portfolio differs significantly from the change that would be expected, given the composition of the portfolio and the observed changes in the market factors, [the hedge fund manager] should reconcile the difference."<sup>29</sup>

Many hedge funds actively seek risk, and indeed serve the market by acting as "risk absorbers;" that is, "by standing ready to lose capital, [they] act as a buffer for other market participants in absorbing 'shocks.'"<sup>30</sup> The ratio of VAR to net asset value ("NAV") provides an indication of the ability of a firm to absorb the losses that it is likely to experience during normal market conditions. This type of ratio very usefully relates the separate concepts of leverage and risk to one another. The Industry Sound Practices report recommends that hedge fund managers track the leverage of their funds by "using 'risk-based leverage' measures reflecting the relationship between the riskiness of a \* \* \* portfolio and the capacity \* \* \* to absorb the impact of that risk." "VAR/Equity" is one of several such measures mentioned in the report.<sup>31</sup>

To be sure, the calculation of VAR is highly sensitive to the selection of the confidence level at which it is measured, and the holding period over which it is calculated. There is no widely accepted standard for either of these parameters. For example, a 95% one-day VAR for a particular firm may be a relatively low dollar value that is expected to be exceeded every month (95% covering 19 out of 20 trading days in a month). By contrast, a 99.6% one-

day VAR for the same firm might be a significantly larger dollar value that is not expected to be exceeded more often than once a year (99.6% covering 249/250 trading days). Many firms use each of these confidence levels and still other firms use levels of 98%, 99%, and so forth.

The Commission has considered whether it would be advisable to ensure that reported VAR information would remain directly comparable across multiple firms. To do so, the Commission would have to mandate the confidence level and holding period for which firms would be required to calculate and report VAR. This would mean, however, that some firms might be compelled to begin calculating VAR information that they do not already prepare and that would be inconsistent with the information used internally to manage trading activities. The Basel Committee on Banking Supervision ("Basel") and IOSCO have recognized that the objectives of comparability across firms and consistency with internal risk management systems are not always compatible. They have emphasized the latter objective because "linking public disclosure to internal risk management processes helps ensure that disclosure keeps pace with innovations in risk measurement and management techniques."<sup>32</sup>

The Commission believes that it is more important to ensure consistency with internal practices and proposes to require reporting persons to report VAR only for confidence levels and holding periods for which VAR is routinely calculated for internal purposes. This approach would provide other market participants with information which is consistent with information the pool's management utilizes in managing risk internally, in addition to imposing a lighter regulatory burden upon reporting persons.

Nor is the Commission proposing to specify a particular method or model that a firm should use to calculate VAR. To do so could create significant burdens for reporting persons and, given the rapid pace of innovation in both financial engineering and risk management, would be of questionable utility. Rather, the Commission is following the "internal model" approach chosen by Basel and IOSCO.

The Commission does seek to encourage firms to use accurate, reliable VAR models, and would do so by mandating the disclosure of the firms'

<sup>32</sup> Basel and IOSCO, "Recommendations for Public Disclosure of Trading and Derivatives Activities of Banks and Securities Firms," October 1999, at 6 (hereinafter the "Basel/IOSCO Disclosure Recommendations").

<sup>29</sup> Industry Sound Practices report at 17.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.* at 19-20.

<sup>28</sup> See discussion *infra* at 14-15.

backtesting results. Backtesting is a process by which the losses implied by the VAR calculation are compared to the losses experienced.<sup>33</sup> The results of this comparison provide valuable information about the validity of a firm's VAR model.<sup>34</sup> The Commission believes that market discipline will be facilitated by disclosing this information, so that other market participants may reach their own conclusions as to the accuracy of the firm's VAR, and the reliability of the firm's risk management systems. For example, if a firm calculates VAR at a 95% confidence interval over a one-day holding period, the expected value for the number of trading days that the VAR figure will be exceeded over a quarter-year of approximately 60 trading days is three ( $60 \text{ trading days} \times 95\% = 57$ ;  $60 - 57 = 3$ ). If a firm's actual one-day losses exceeded its calculated 95% one-day VAR on ten separate occasions during a quarter, and no sufficient explanation is provided, other market participants might conclude that the VAR calculated by the firm is of questionable reliability, and might draw adverse inferences concerning the firm's risk management.

Even when validated by solid backtest results, however, VAR provides only part of the information necessary to fully evaluate a firm's exposure to market risk. VAR represents merely the loss that is not expected to be exceeded under "normal" market conditions; it provides no information whatsoever about the possible extent of losses under "abnormal" market conditions. Even if VAR accurately predicts the worst loss that would occur in 99.6% of the trading days over a year ( $250 \times 99.6\% = 249$ ), it would not provide any information as to the magnitude of potential losses on the remaining 0.4% of the trading days ( $250 \times 0.4\% = 1$ ). A reporting person can only explore the potential extent of such extraordinary losses by conducting stress tests.

Stress tests involve subjecting models of the firm's positions to various sets of extreme market conditions and measuring the losses that would result.<sup>35</sup> These conditions might include

historical circumstances, such as the 1987 stock market drop or the 1998 Russian loan default, or hypothetical scenarios specifically designed to stress the firm's current positions. Consequently, the results of properly performed stress tests can show extraordinarily high hypothetical losses. For example, a firm with total assets of \$3 billion, a net asset value of \$500 million, and a 99.6% one-day VAR of \$100 million (e.g. a VAR-to-NAV ratio of only 20% which many might consider quite adequate) could very likely, through rigorous stress tests, generate modeled losses well in excess of \$500 million.

If reporting persons were compelled to publicly disclose their stress test results, they might be discouraged from performing the most rigorous stress tests that they could develop and might not learn of and address potential weaknesses in their portfolio strategies. Therefore, the proposed rule would not require reporting persons to report stress test results. Rather, reporting persons would be required simply to report whether stress tests have been performed during the quarter and, if so, whether the results of such tests are communicated to an appropriate level of management.

The reporting person would be permitted (but not required) to provide any other information with which it might wish to supplement the reported VAR information. This information would be posted publicly along with the required information.

### 3. Initial Reporting Concerning Risk Management Practices Under Rule 4.27

As discussed above, the Commission is not proposing to mandate use of specific parameters or methodologies for monitoring the risk exposures. This means, however, that for the quantitative information in the quarterly reports to be useful to other market participants, some additional information must be made available to enable the quarterly reports to be placed in context.

The Commission therefore proposes that each reporting person submit narrative descriptions of their practices in five areas set forth in Section 4.27(c)(2). These cover the reporting person's policies, procedures, and

systems for supervising, monitoring, and reviewing market, credit, and funding liquidity risks generated by its financing, trading, and investment activities. Initially, each reporting person would be required to submit an entire set of responses. Thereafter, a revised set of responses would be required following any material change in those policies, procedures, or systems. Such updated responses would be due concurrently with the submission of the next quarterly report required under Section 4.27(d)(2).

The Commission has developed the topics described below based on a review of discussions of "best practices" from both governmental organizations<sup>36</sup> and private industry.<sup>37</sup> It is important to note that the Commission is not proposing to require reporting persons to use any of the tools that are the subjects of the inquiries. This is consistent with the caveats in the private industry reports, which emphasize that the best practices they discuss may not be appropriate for hedge funds of all sizes.<sup>38</sup> Rather, the Commission is simply proposing that reporting persons be required to disclose to the market information about its use of such tools, along with any additional information the reporting person might believe is necessary to put that disclosure in context. It would then be up to a reporting person's counterparties to determine whether or not the reporting person's risk management efforts are adequate, and the appropriate steps to take in light of that determination. Thus, these reports are expected to lead to improvements in risk management systems as market discipline encourages firms to adopt best practices as they evolve in the industry.

<sup>36</sup> See generally PWG Report; Basel and IOSCO, "Trading and disclosures of Banks and Securities Firms—Results of the Survey of Public Disclosures in 1998 annual Reports," December 1999; the IOSCO Hedge Fund Report; the Basel/IOSCO Disclosure Recommendations; Basel, "Sound Practices for Banks' Interactions with Highly Leveraged Institutions," January 1999; Basel/IOSCO, "Framework for Supervisory Information about Derivatives and Trading Activities," September 1998; IOSCO, "Principles for the Supervision of Operators of Collective Investment Schemes," September 1997; and Basel, "Supervisory Framework for the Use of 'Backtesting' in Conjunction with the Internal Models Approach to Market Risk Capital Requirements," January 1996.

<sup>37</sup> See generally the Industry Sound Practices Report and the Counterparty Risk Management Policy Group (or "CRMPG," a group of major commercial and investment banks), "Improving Counterparty Risk Management Practices," June 1999 (hereinafter the "CRMPG Report").

<sup>38</sup> See, e.g., CRMPG Report at 2 and Industry Sound Practices report at 2.

<sup>33</sup> "By comparing actual changes in the value of the portfolio to the changes generated by the VAR calculation, the [hedge fund manager] can gain insight into whether the VAR model is accurately measuring a [hedge fund's] risk." Industry Sound Practices report at I-13.

<sup>34</sup> "[I]f the frequency of changes in value of the portfolio exceeds the frequency generated by the market risk model (a statistical expectation based on the confidence level of the market risk model), such deviation should be scrutinized to determine its source." *Id.* at 16.

<sup>35</sup> Hedge fund managers are advised to "perform 'stress tests' to determine how potential changes in

market conditions could impact the market risk of [their] portfolio[s]. \* \* \* [and] also consider conducting 'scenario analyses' to benchmark the risk of the [the fund's] current portfolio against various scenarios of market behavior (historical or prospective) that are relevant to the [manager's] trading activities (e.g. the October 1987 stock market event, the Asian financial crisis \* \* \*)." Industry Sound Practices report at 15-16.

### *Topic 1—Approach to Risk Management*

The first topic is the reporting person's overall approach to risk management. A responsive disclosure would include a discussion of the extent to which the reporting person has established an independent risk monitoring function within its organization, the extent of that function's resources and the nature of its authority, the types of risk monitoring techniques the reporting person employs, and the ways in which senior management is involved in risk management.<sup>39</sup>

The Commission believes this information would be of particular value in helping other market participants to develop an understanding of the strength of the reporting person's commitment to sound risk management practices. For example, information about the degree to which senior management is involved in risk monitoring, the authority which the risk monitoring function may exercise over other functions such as the trading desk, and the financial and human resources dedicated to risk management efforts could assist other market participants in gauging how rigorously the firm balances its risk taking against potential returns.

### *Topics 2 (Market Risk in Normal Markets) & 3 (Market Risk in Abnormal Markets)*

The second and third topics both relate to the reporting person's approach to measuring and managing its exposure to market risk. The second topic is the method used by the reporting person to measure market risk during normal market conditions, how it validates its models (for example, backtesting), and whether its practices are tested by external auditors. These inquiries are intended to give other market participants insight into the reliability of the quantitative market risk information conveyed quarterly by reporting persons. The knowledge that a reporting person is utilizing contemporary techniques to measure market risk, has addressed major

<sup>39</sup>The risk monitoring function "should report directly to [s]enior [m]anagement and be staffed with persons having sufficient experience and knowledge to understand [the fund's] trading strategies and the nature and risk of its investments." In addition, "[c]omprehensive and centralized systems for position and global exposure reporting and risk analysis should function independently of risk selection/portfolio management personnel so that trading activities and operations may be effectively supervised and compliance with trading policies and risk limits can be controlled." Industry Sound Practices report at 10.

problem areas with input data, and subjects its methodologies to backtesting and external audits might give other market participants greater confidence in these quarterly numbers.

The third topic is the reporting person's use of stress tests, its policies and practices for ensuring that meaningful and realistic scenarios are used in stress tests, and the extent of management involvement in the process of developing scenarios and evaluating results. This information is important in helping other market participants evaluate the extent to which the reporting person prepares for abnormal market conditions. Stress tests are an essential tool for exploring the potential extent of extraordinary losses under such market conditions. The value of stress testing depends on the development and use of scenarios that are meaningful to the unique market positions of the reporting person. Ensuring that scenarios are meaningful requires the involvement of experienced and seasoned traders and managers.

### *Topic 4 (Credit Risk)*

The fourth topic is credit risk; that is, the likelihood that trading counterparties will be unwilling or unable to perform their obligations to a reporting person (also sometimes called "default risk"). Credit risk is currently the focus of widespread efforts to develop quantitative measurement techniques similar to those that have been developed to measure market risk. However, these techniques are not yet as well developed nor are they as generally accepted as are the market risk measurement techniques such as value-at-risk. Accordingly, the Commission does not propose to require any disclosure of quantitative credit risk information in the quarterly reports.

The Commission does believe that other market participants will benefit from insight into the extent to and means by which a reporting person monitors its credit risk exposures. Therefore, under the proposal, each reporting person would be required to provide information about the basic processes by which it evaluates the creditworthiness of potential counterparties, whether it employs any of various methodologies to quantify its credit risk exposures, whether it monitors the concentration of its exposures, and whether it uses credit risk mitigation tools such as netting agreements.

### *Topic 5 (Funding Liquidity Risk)*

The fifth topic is funding liquidity risk; that is, the risk that due to its capital structure or to constraints upon

its ability to access additional external capital a reporting person will be unable to fund its operations or to fulfill its trading obligations without resorting to the unplanned liquidation of positions.<sup>40</sup>

The Commission has concluded that requiring a reporting person to disclose detailed information on its access to additional capital might impinge upon sensitive relationships and has decided not to propose requiring the disclosure of quantitative information about funding liquidity risk in the quarterly reports. Each reporting person would, however, be required to provide a description of the processes by which it monitors its funding liquidity, determines an appropriate limit on financial leverage, and ensures its ability to access additional capital when necessary.

### 4. Filing and Attestation

Proposed Section 4.27(e) would provide for the filing of required reports by mail and concurrently by e-mail. The Commission believes that electronic filing would expedite processing and publication of the data filed, and that the large, sophisticated entities that would be required to report under this regulation are likely to have the facilities to file reports in this matter without undue burden. The Commission proposes to require attestation of all required filings in a manner consistent with Section 4.22(h).

### 5. Definitional Matters

Proposed Sections 4.27(a)(1) and (7) refer to the definitions of commodity pool operator and net asset value set forth in § 4.10 of Part 4.

Section 4.27(a)(2) would define control as the direct or indirect power to direct or cause the direction of the management and policies of the pool, whether through the ownership of any share, partnership interest or other investment in the pool, by contract or otherwise. This definition is modeled after that found in regulation 12b-2 under the Securities Exchange Act of 1934, 17 CFR 240.12b-2.

Section 4.27(a)(3) would define controlled assets as the aggregate of all assets in one or more pools under common control. (Investments by one such pool in another are excluded to avoid double counting). Section

<sup>40</sup>Hedge fund managers "should evaluate the stability of sources of liquidity and plan for funding needs accordingly, including a contingency plan in periods of stress \* \* \* [including] taking into account potential investor redemptions and contractual arrangements that affect [the hedge fund's] liquidity (e.g. notice periods for reduction of credit lines by counterparties)." Industry Sound Practices report at 18.

4.27(a)(4) would define controlled net asset value in a similar manner.

Section 4.27(a)(5) would define governing authority of a pool to mean the pool's Board of Directors, managing member, general partner, trustee or similar person with the legal authority and responsibility to manage the affairs of the pool, while section 4.27(a)(10) would define senior management of a reporting person as the managing committee, group of executives, or other body with the authority and responsibility to direct and oversee the trading activities of a pool controlled by the reporting person.

Section 4.27(a)(6) would define loss as any adverse change, realized or unrealized, in the value of a pool's portfolio, as measured for risk management purposes. This definition focuses on losses as actually measured by the reporting person. This calculation excludes additions, withdrawals, and redemptions of capital.

Section 4.27(a)(8) would define pool as any investment trust, syndicate or similar form of enterprise that is controlled by a commodity pool operator.

Section 4.27(a)(9) would define reporting period as each calendar quarter; however, if all pools controlled by the same person have a fiscal year other than the calendar year, and all such pools have the same fiscal year, it shall mean each such fiscal quarter. The latter restriction is intended to avoid confusion in cases where multiple pools controlled by the same person have different fiscal years.

Section 4.27(a)(11) would define VAR as the amount, stated in U.S. dollars, which a pool's losses during a stated period (the "holding period") are expected, with a stated degree of certainty (the "confidence level"), not to exceed. This includes the statistical measure, "value-at-risk," currently calculated by many market participants, as well as any similar measure of market risk that may be developed or used.

### III. Related Matters

#### A. Paperwork Reduction Act

Rule 4.27 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

#### Collection of Information

Rules Relating to the Public Reporting by Operators of Certain Large Commodity Pools, OMB Control Number 3038-XXXX.

The burden associated with the proposed new rule is estimated to be 1,125 hours which will result from new reporting requirements for certain large commodity pool operators (CPOs).

The estimated burden of the proposed new rule with respect to ongoing quarterly reports required under Section 4.27(d) of each entity that qualifies under Section 4.27(b) was calculated for each year in which Rule 4.27 is effective as follows:

*Estimated number of respondents:* 25  
*Annual responses by each respondent:* 4

*Total annual responses:* 100  
*Estimated average hours per response:* 5

*Annual reporting burden:* 500 hours  
The estimated burden of the proposed new rule with respect to the initial report required under Section 4.27(c) of each entity in the year in which such entity first qualifies under Section 4.27(b) was calculated for the first year in which Rule 4.27 is made effective as follows:

*Estimated number of respondents:* 25  
*Annual responses by each respondent:* 1

*Total annual responses:* 25  
*Estimated average hours per response:* 25

*Annual reporting burden:* 625 hours  
Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155—21st Street, NW, Washington, DC 20581, (202) 418-5160.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.<sup>41</sup> The Commission has previously determined that FCMs and CPOs are not small entities for the purpose of the RFA.<sup>42</sup> Moreover, the regulations that are the subject of the present rulemaking apply, by their terms, only to extraordinarily large entities. The Chairman, on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed regulations might have on small entities.

#### List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Commodity interest, Commodity pool operators, Consumer protection.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, section 1a(4), 4l, 4m, 4n, and 8a, 7 U.S.C. 1a(4), 6l, 6m, 6n, and 12a, the Commission hereby proposes to amend Chapter I of the Code of Federal Regulations as follows:

#### PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

<sup>41</sup> 47 FR 18618-18621 (April 30, 1982).

<sup>42</sup> 47 FR 18619-18620 (April 30, 1982).

**Authority:** 7 U.S.C. 1a.2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. A new § 4.27 is proposed to be added to subpart B to read as follows:

**§ 4.27 Public reporting by operators of certain large commodity pools.**

(a) General definitions. For the purposes of this section:

(1) *Commodity pool operator* or *CPO* has the same meaning as “commodity pool operator” defined in section 1a(4) of the Commodity Exchange Act;

(2) *Control* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise;

(3) *Controlled assets* means the sum of all assets in all pools controlled by the same person, exclusive of any interest that any pool controlled by such person may have in any other pool controlled by such person;

(4) *Controlled net asset value* or *CNAV* means the sum of the net asset values for all pools controlled by the same person, exclusive of any interest that any pool controlled by such person may have in any other pool controlled by such person;

(5) *Governing authority* means a pool’s Board of Directors, managing member, general partner, trustee or similar person with the legal authority and responsibility to manage the affairs of the pool;

(6) *Loss* means any adverse change, realized or unrealized, in the value of a pool’s portfolio, as measured for risk management purposes. This calculation excludes any additions, withdrawals, or redemptions of capital;

(7) *Net asset value* or *NAV* has the same meaning as “net asset value” as defined in § 4.10(b);

(8) *Pool* means any investment trust, syndicate or similar form of enterprise that is controlled by a commodity pool operator;

(9) *Reporting period* means either:

(i) Each quarter ending March 31, June 30, September 30, or December 31, or

(ii) In the case of a reporting person controlling one or more pools of which each has the same fiscal year that is not the calendar year, each quarter of such fiscal year for such pool(s);

(10) *Senior management* means the managing committee, group of executives, or other body of a reporting person with the authority and responsibility to direct and oversee the trading activities of a pool controlled by such reporting person; and

(11) *VAR* means the amount, stated in U.S. dollars, which a pool’s losses

during a stated period (the “holding period”) are expected, with a stated degree of certainty (the “confidence level”), not to exceed.

(b) Persons required to report. (1) A reporting person is any commodity pool operator that:

(i) Controls one or more pools where, as of the last business day of a reporting period,

(A) The controlled assets of such pool or pools are equal to or greater than three billion dollars (\$3,000,000,000); or

(B) The controlled net asset value of such pool or pools is equal to or greater than one billion dollars (\$1,000,000,000); or

(ii) That qualified as a reporting person pursuant to this paragraph (b)(1) as of the last business day of any of the prior three reporting periods.

(2) For purposes of calculations pursuant to this paragraph (b), all amounts shall be converted to U.S. dollars at the rate in effect on the date for which such report is made.

(c) Initial reporting. Each reporting person shall file with the Commission, not later than 30 days after the end of the first reporting period during which such reporting person satisfies the requirements of paragraph (b) of this section, a report with respect to each pool under its control and each such report shall contain the name and address of the reporting person, the name of the pool with respect to which the report is being filed, and the following information:

(1) A narrative description of the strategic approach taken toward the management of market, credit, and funding liquidity risk exposures, including:

(i) The process by which the pool’s governing authority sets standards for appropriate risk taking,

(ii) The structure, autonomy, and authority of the risk monitoring function,

(iii) The types of tests and tools used to control risk taking in trading and investment activities, and

(iv) The extent and frequency of risk information routinely provided to the governing authority and senior management;

(2) A narrative description of the technique (such as value-at-risk) used to measure, monitor, and manage the exposure of the pool to market risk, including discussions of, as applicable:

(i) Methodology (for example, historic, parametric, Monte Carlo, or quasi Monte Carlo),

(ii) Confidence levels and holding periods,

(iii) The evaluation of correlations within and among markets,

(iv) How the position liquidity of portfolios is monitored,

(v) How non-normally distributed data is handled,

(vi) Whether historic data is weighted,

(vii) How models are backtested or otherwise validated, and

(viii) How often models are tested by an external auditor;

(3) A narrative description of the use of stress tests to determine the magnitude of potential losses in excess of VAR, including discussions of:

(i) The methodologies used (for example, historic events, hypothetical scenarios, or matrix analysis),

(ii) Stress factors examined,

(iii) The extent of senior

management’s involvement with the design and construction of stress tests,

(iv) The extent to which stress test results are communicated to the governing authority and to senior management, and

(v) The policies established with respect to actions that management should take in response to results deemed incompatible with its risk appetite;

(4) A narrative description of the measurement, monitoring, and management of the pool’s exposure to credit risk, including:

(i) How the creditworthiness of individual counterparties is evaluated,

(ii) Whether value-at-risk-style techniques for quantifying credit risk are utilized,

(iii) How the concentration of exposures to particular counterparties and sectors is monitored, and

(iv) Whether netting agreements and other credit risk mitigation tools are employed; and

(5) A narrative description of the measurement, monitoring, and management of the pool’s exposure to funding liquidity risk, including:

(i) The approach taken toward managing financial leverage,

(ii) How the level of liquid reserves is determined, and

(iii) The extent of the authority, if any, to:

(A) Restrict withdrawals of capital or other redemptions of interests in the pool or repayments of subordinated debt,

(B) Compel additional contributions of capital, and

(C) Access committed lines of credit.

(6) If any tests, analyses, or practices discussed in paragraphs (c)(1) through (5) of this section are not performed, the reporting person should so state separately with respect to each item.

(d) Quarterly reporting. Each reporting person shall file with the Commission, not later than 30 days after

the end of each reporting period, a report with respect to each pool under its control. Each such report shall contain the name and address of the reporting person, the name of the pool with respect to which the report is being filed, and the following information:

(1) Financial information:

- (i) A statement of financial condition as of the end of the reporting period;
- (ii) A statement of income or loss for the reporting period;
- (iii) A statement of changes in financial position for the reporting period; and
- (iv) A statement of changes in net asset value over the reporting period which shall be prepared in accordance with § 4.22(a)(2).

(2) Risk information:

- (i) The highest, lowest, and last VAR for the pool during the reporting period at each confidence level and holding period for which it was calculated by the reporting person; provided that VAR calculated for confidence intervals in excess of 99.6% need not be reported;
- (ii) (A) For each holding period for which the reporting person calculated VAR, the number of occasions, if any, on which losses exceeded the corresponding VAR calculated for that holding period at the greatest confidence interval, not in excess of 99.6%, for which VAR was calculated by the reporting person and

(B) The dollar amount of the greatest loss during the reporting period, whether or not it exceeded the corresponding VAR;

(iii) A brief discussion of whether, during the quarter, stress tests were performed with respect to the pool's positions and, if so, whether the results thereof were reported to senior management and the governing authority; and

- (iv) Any additional information which the reporting person wishes to present to supplement the information in paragraph (d)(2) of this section.
- (3) Changes in risk management practices: If, for any pool controlled by the reporting person, there is any material change to the information provided pursuant to paragraph (c) of this section, as modified by previous submissions pursuant to this paragraph (d)(3) concerning that pool, the reporting person shall submit a revised set of responses pursuant to paragraph (c) of this section.

(4) All financial information shall be reported in accordance with generally accepted accounting principles consistently applied.

(e) Filing requirements. Each report required to be filed with the Commission under this section shall:

(1) Be signed in accordance with the requirements of § 4.22(h); and

(2) Be sent via first-class mail, postage prepaid, to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155—21st Street, NW., Washington, DC 20581, Attention: Managed Funds Branch, and by attachment to an e-mail message addressed and sent to [hfreport@cftc.gov](mailto:hfreport@cftc.gov) with electronic confirmation of delivery activated.

(3) Copies of reports shall be retained in accordance with § 1.31.

(f) Public records. Reports filed pursuant to this section shall be considered Public Records as defined in § 145.0 of this chapter.

\* \* \* \* \*

Issued in Washington, DC, on April 11, 2000 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission,*

**Dissenting Remarks of Commissioner Barbara Pedersen Holum, Proposed Rule 4.27; Reporting by Operators of Certain Large Commodity Pools**

In April 1999, the President's Working Group on Financial Markets issued a report entitled "Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management" (the "PWG Report"). Among other things, the PWG Report recommended (i) that registered CPOs operating large funds begin filing with the Commission quarterly, (ii) that the reports include more comprehensive information on market risk, and (iii) that information in the reports be published.

These recommendations respond to events occurring twenty months ago. However, market developments since then call into question whether a specific prescriptive rule, such as proposed Rule 4.27, is the appropriate response at this time.

In my judgement, and in light of the recommendations of the CFTC staff task force report entitled "A New Regulatory Framework," the Commission should seek comment on whether the specific recommendations of the PWG Report remain current and, if so, how best to achieve them. For these reasons, I respectfully dissent from the Commission's issuance of proposed Rule 4.27.

Commissioner Barbara Pedersen Holum  
Date: April 7, 2000.

Concurring Statement of Commissioner Erickson

I concur with the Commission's publication of the proposed rules that would require commodity pool operators (CPOs) of the largest commodity pools to file quarterly reports with the Commission. Given that the proposed rules are intended to respond to the events surrounding the near-collapse of Long-Term Capital Management (LTCM), comments from the public and especially from the industry will be instructive in the Commission's efforts to craft an approach that is indeed effective. In addition to comments limited to the proposed rule, I am interested in comments that will inform the

Commission about how the industry has addressed the potential risks posed by certain highly leveraged institutions since the LTCM episode. Moreover, I encourage the submission of comments that provide input on the following issues:

1. The proposed rules envision a reporting system whereby the Commission is essentially a conduit for the public dissemination of quarterly reports without any further review by any federal financial regulator. Is publication alone sufficient?

2. It is not clear that reporting on a quarterly basis would have been sufficient to address the events precipitating the private rescue of LTCM. Assuming that reporting alone is an adequate response, would quarterly reporting be effective?

3. The April 1999 report of the President's Working Group on Financial Markets concluded that the "central public policy issue raised by the LTCM episode is how to constrain excessive leverage more effectively." One possible way to address leverage concerns would be to require CPOs to provide the Commission with a confidential early warning notification structured similar to the Commission's existing notification requirement with respect to net capital requirements for futures commission merchants. Such an approach may address publicly expressed concerns about the quantity and quality of the information available to federal financial regulators in the weeks preceding LTCM. What are the public policy implications of such an approach—either in addition to or in lieu of quarterly reports?

[FR Doc. 00-9463 Filed 4-14-00; 8:45 am]

BILLING CODE 6351-01-P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-116048-99]

RIN 1545-AX63

#### Stock Transfer Rules: Supplemental Rules; Hearing Cancellation

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

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to supplemental rules for stock transfers.

**DATES:** The public hearing originally scheduled for Thursday, April 20, 2000, at 10 a.m., is canceled.

**FOR FURTHER INFORMATION CONTACT:** Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of

public hearing that appeared in the **Federal Register** on January 24, 2000, (65 FR 3629), announced that a public hearing was scheduled for April 20, 2000 at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 367(b), of the Internal Revenue Code. The deadline for requests to speak and outlines of oral comments expired on March 31, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 11, 2000, no one has requested to speak. Therefore, the public hearing scheduled for April 20, 2000, is cancelled.

**Cynthia E. Grigsby,**  
Chief, Regulations Unit, Assistant Chief  
Counsel (Corporate).

[FR Doc. 00-9409 Filed 4-14-00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IL196-1; MO-097-1097; FRL-6578-2]

#### Approval and Promulgation of Implementation Plans; Illinois and Missouri; Ozone

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the Illinois and Missouri 1-hour ozone attainment demonstration State Implementation Plans (SIPs) for the St. Louis moderate ozone nonattainment area. The attainment demonstration SIPs are addressed in Illinois Environmental Protection Agency (IEPA) submittals dated November 15, 1999 and February 10, 2000 and in Missouri Department of Natural Resources (MDNR) submittals dated November 10, 1999 and January 19, 2000. In the alternative, the EPA is proposing to disapprove the attainment demonstration if: Illinois and Missouri do not revise the attainment demonstration modeling and analyses to incorporate corrections to the 1996 base year emissions inventory and successfully demonstrate attainment of the 1-hour standard based on the revised modeling; Illinois or Missouri do not submit proposed regional Oxides of Nitrogen (NO<sub>x</sub>) emission control regulations for Electric Generating Units

(EGUs) by June 2000 and final adopted regional (NO<sub>x</sub>) emission control regulations for EGUs by December 2000; or Missouri does not submit a proposed motor vehicle emissions budget by June 30, 2000. The EPA is proposing to: approve an exemption from (NO<sub>x</sub>) emission control requirements for Reasonably Available Control Technology (RACT) for the Illinois portion of the St. Louis ozone nonattainment area; extend the ozone attainment date for the entire St. Louis ozone nonattainment area to November 15, 2003 while retaining the area's current classification as a moderate ozone nonattainment area; and approve the transportation conformity motor vehicle emissions budget submitted by Illinois for the Illinois portion of the St. Louis ozone nonattainment area. The final approvals of the extension of the ozone attainment date and the motor vehicle emissions budgets are contingent on the final approval of the ozone attainment demonstration. The final approval of the attainment demonstration is contingent on the final approval of the regional (NO<sub>x</sub>) emission control regulations and on the submittal of adequate motor vehicle emissions budgets. The final approval of the (NO<sub>x</sub>) RACT exemption for Illinois is contingent on the final approval of an attainment demonstration that does not rely on (NO<sub>x</sub>) emission reductions resulting from (NO<sub>x</sub>) RACT implementation in the Illinois portion of the St. Louis nonattainment area. The EPA is proposing to disapprove Illinois' request for exemption from (NO<sub>x</sub>) requirements for New Source Review (NSR) and general conformity.

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

**ADDRESSES:** Written comments should be sent to: Jay Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; or Wayne Leidwanger, Chief, Air Planning and Development Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the States' submittals and EPA's Technical Support Document (TSD) for this proposed rule, and other relevant materials are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (please telephone Mark Palermo at (312) 886-6082 before visiting the Region 5

office); United States Environmental Protection Agency, Region 7, Air, Radiation, and Toxics Division, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:**  
Edward Doty, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886-6057, E-Mail Address: doty.edward@epamail.epa.gov; or Aaron Worstell, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, Telephone Number (913) 551-7787, E-Mail Address: worstell.aaron@epa.gov.

#### SUPPLEMENTARY INFORMATION:

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#### I. Background

##### A. Basis for the States' Attainment Demonstration SIPs

What are the Relevant Clean Air Act Requirements?

The Clean Air Act (Act) requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act

sections 108 and 109. In 1979, EPA promulgated the 1-hour ground-level ozone standard of 0.12 parts per million (ppm) (120 parts per billion (ppb)). 44 FR 8202 (February 8, 1979).

Ground-level ozone is not emitted directly by sources. Rather, Volatile Organic Compounds (VOC) and NO<sub>x</sub>, emitted by a wide variety of sources, react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOC are referred to as precursors of ozone.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm in any given day (only the highest 1-hour ozone concentration at the monitor during any 24 hour day is considered when determining the number of exceedance days at the monitor). An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances occur at any monitor in the area or in its immediate downwind environs.

The highest of the fourth-highest daily peak ozone concentrations over the 3 year period at any monitoring site in the area is called the ozone design value for the area. The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The St. Louis ozone nonattainment area was classified as moderate and its attainment date was November 15, 1996. The St. Louis ozone nonattainment area is defined (40 CFR 81.314 and 81.326) to contain Madison, Monroe, and St.

Clair Counties in Illinois, and Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City in Missouri.

The requirements of the Act for ozone attainment demonstrations for moderate ozone nonattainment areas are determined by considering several sections of the Act. Section 172(c)(6) of the Act requires SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the implementation of all reasonably available control measures (including Reasonably Available Control Technology (RACT)) and requires the SIP to provide for attainment of the NAAQS. Section 182(b)(1)(A) requires the SIP to provide for specific annual reductions in emissions of VOC and NO<sub>x</sub> as necessary to attain the ozone NAAQS by the applicable attainment date. Finally, section 182(j)(1)(B) requires the use of photochemical grid modeling or other methods judged to be at least as effective to demonstrate attainment of the ozone NAAQS in multi-state ozone nonattainment areas. As part of today's proposal, EPA is proposing action on the attainment demonstration SIP revisions submitted by Illinois and Missouri for the St. Louis multi-state ozone nonattainment area and its associated ozone modeling domain.

In general, an attainment demonstration SIP includes a modeling analysis showing how an area will achieve the standard by its attainment date and the emission control measures necessary to achieve attainment. The attainment demonstration SIPs must include motor vehicle emission budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that States consider the effects of emissions associated with federally-funded transportation activities on attainment of the standard. Attainment demonstrations must include the estimates of motor vehicle VOC and NO<sub>x</sub> emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation plans, programs, and projects conform to the attainment SIP.

What Is the History and Time Frame for the State Attainment Demonstration SIP and How Is It Related to Regional NO<sub>x</sub> Controls?

Notwithstanding significant efforts by the States, in 1995 EPA recognized that many States in the eastern half of the United States could not meet the

November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO<sub>x</sub> and VOC in upwind States (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by the States but noting the remaining difficulties in making attainment demonstration SIP submittals.<sup>1</sup> Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the Country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)<sup>2</sup> and provided for the States to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO<sub>x</sub> is significant and should be reduced regionally to enable States in the eastern half of the Country to attain the ozone NAAQS.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 States and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the 1-hour standard because they did not regulate NO<sub>x</sub> emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions, including Illinois and Missouri, to revise their SIPs to require NO<sub>x</sub> emission reductions within each State to a level consistent with a NO<sub>x</sub> emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998).

<sup>1</sup> Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

<sup>2</sup> Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

This final rule is commonly referred to as the NO<sub>x</sub> SIP call.<sup>3</sup>

Although Illinois and Missouri do not rely on the full ozone impacts and regional NO<sub>x</sub> emission reduction requirements of the NO<sub>x</sub> SIP call in the ozone attainment demonstration SIPs reviewed here, they do rely, in part, on regional, statewide NO<sub>x</sub> emission reductions for their own States and for States upwind of Illinois and Missouri. In developing the attainment demonstration, Illinois and Missouri originally anticipated the implementation of the NO<sub>x</sub> SIP call. Because of a court-ordered stay of the submission deadline for SIPs in response to the NO<sub>x</sub> SIP call, Illinois and Missouri reconsidered the role and magnitude of regional NO<sub>x</sub> reductions. As noted below, the NO<sub>x</sub> SIP call has substantially been upheld by the U.S. Court of Appeals for the District of Columbia; accordingly, Illinois and Missouri may expect even more upwind NO<sub>x</sub> emission reductions than they addressed in developing the attainment demonstration.

#### What Is the Time Frame for Taking Action on the Attainment Demonstration SIPs?

The States submitted the attainment demonstration SIP revisions and supporting documentation between November 1999 and February 2000. The EPA believes that it is important to keep the process moving forward in evaluating these plans and, as appropriate, approving them. Thus, in today's **Federal Register**, EPA is proposing to approve the plans if the States make the additional submittals called for in this document. The EPA, however, proposes to disapprove the plans if the States do not submit all of the emission control regulations required to support the attainment of the 1-hour ozone standard as demonstrated in these SIPs, do not correct the ozone attainment demonstration modeling to incorporate changes recently made in the ozone precursor emissions inventory, or do not have adequate motor vehicle emission budgets to support transportation conformity determinations. The States are expected to submit the proposed rules by June 2000, along with any proposed revisions to the ozone attainment demonstration modeling. The States are expected to submit final adopted measures, and final revisions to the attainment demonstration, no later

than December 2000. The EPA intends to act on the State NO<sub>x</sub> regulations in separate rulemaking actions, and will not take final action to approve the attainment demonstration until it completes action on the rules.

The anticipated schedule for actions on the States' submittals has been set forth in a recent filing in the United States District Court for the District of Columbia. *Sierra Club v. Carol Browner* (D.C.D.C. No. 98-02733). The EPA intends to complete rulemaking on the attainment demonstration and attainment date extension for the St. Louis area when it completes action on the submittals from both Missouri and Illinois of the additional control measures necessary for the attainment demonstration. The following outlines the anticipated schedule for EPA action.

If, by June 30, 2000, either Illinois or Missouri does not submit proposed regulations for the emission control measures (local and regional) needed to achieve attainment of the 1-hour ozone standard as indicated by the attainment demonstration, and any proposed revisions to the attainment demonstration (to include any proposed revisions to the motor vehicle emissions budgets) determined to be necessary after remodeling the 1996 base year ozone levels to account for revised 1996 base year emissions, the EPA intends to take final action on the proposed reclassification of the St. Louis area<sup>4</sup> to serious ozone nonattainment no later than August 1, 2000. If either State does not submit final adopted emission control measures and any final revisions to the attainment demonstration (including any final revisions to the motor vehicle emissions budgets) by December 31, 2000, the EPA intends to take final action on the reclassification of the area to serious nonattainment for ozone no later than February 1, 2001. The EPA plans to send a notice of final rulemaking on the attainment demonstration and attainment date extension to the **Federal Register** no later than February 22, 2001.

Due to the circumstances in which the SIP submissions arose, the EPA is proposing two alternative courses of action: approval or disapproval in the alternative. The proposal for approval provides that the States must take additional actions to obtain final approval. Failure by the States to

complete these additional actions will result in EPA's disapproval of the SIPs.

#### B. Components of a Modeled Attainment Demonstration

The EPA provides (*Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA-454/B-95-007, June 1996) that States may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment. To have a complete modeling demonstration submission, States should have submitted the required modeling analyses and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard. Additional required components are discussed below.

#### What EPA Guidelines Apply to the Attainment Demonstration Submittals?

The following documents contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. *Guideline for Regulatory Application of the Urban Airshed Model*, EPA-450/4-91-013, July 1991. Web site: <http://www.epa.gov/ttn/scram/> (file name: "UAMREG").
2. Memorandum, "The Ozone Attainment Test in State Implementation Plan (SIP) Modeling Demonstrations," from Joseph A. Tikvart, Office of Air Quality Planning and Standards, December 16, 1992.
3. *Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations*, EPA-454/R-93-056, March 1994. Web site: <http://www.epa.gov/ttn/scram/> (file name: "UAMRPTRQ").
4. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.
5. *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA-454/B-95-007, June 1996. Web site: <http://www.epa.gov/ttn/scram/> (file name: "O3TEST").
6. Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS," from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.
7. Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, July 16, 1998.

<sup>3</sup> EPA is also requiring regional NO<sub>x</sub> emission reductions under its authority in section 126 of the Act to assure that reductions occur in upwind areas which have been shown to impact attainment of the ozone standard in downwind areas.

<sup>4</sup> On March 18, 1999, 64 FR 13384, the EPA proposed to reclassify the St. Louis area to a serious ozone nonattainment area based on continued monitored violations of the 1-hour ozone standard. The EPA also issued a notice of the St. Louis area's potential eligibility for an attainment date extension.

8. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations," from Merrylin Zaw-Mon, Acting Director of the Regional and State Programs Division, November 3, 1999. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

9. Memorandum, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," from John S. Seitz, Director of Office of Air Quality Planning and Standards, November 30, 1999.

10. Paper, "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled," Office of Air Quality Planning and Standards, November 1999. Web site: <http://www.epa.gov/ttn/scram/> (file name: "ADDWOE1H").

#### What Are the Modeling Requirements for the Attainment Demonstration?

For purposes of demonstrating attainment, the Act requires States containing portions of a multi-state moderate ozone nonattainment area to use photochemical grid modeling or an analytical method judged by EPA to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone in the nonattainment area and its modeling domain. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year to predict air quality changes in the attainment year due to the emission changes, which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted ozone concentrations inside the modeling domain are at or below the ozone standard or an acceptable upper limit above the standard permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the standard or upper limit, EPA guidance allows for an optional weight-of-evidence determination which incorporates other analyses, such as air quality and emissions trends, to address uncertainty inherent in the application of photochemical grid models. This latter approach may be used under certain circumstances to support the demonstration of attainment.

The EPA guidance identifies the features of a modeling analysis that are

essential to obtain credible results. First, the State must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (State and local agencies, EPA, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the State must select air pollution days, *i.e.*, days in the past with high ozone concentrations exceeding the standard, that are representative of the ozone pollution problem for the nonattainment area. Third, the State needs to identify the appropriate dimensions of the area to be modeled, *i.e.*, the modeling domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include any large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Alternatively, a much larger modeling domain may be established, addressing the impacts of both local and regional emission control measures on a number of ozone nonattainment areas. In both cases, the attainment determination is based on the review of ozone predictions within the local area where control measures are most beneficial to bring the area into attainment (referred to as the local modeling domain). Fourth, the State needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the State needs to generate meteorological and emissions data that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days. Finally, the State needs to verify that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the ozone standard. A predicted peak ozone concentration above 0.124 ppm (124 ppb) indicates that the area is expected to exceed the standard in the attainment year. This type of test is often referred to as an exceedance test. The EPA's June 1996 guidance recommends that States use either of two exceedance tests for the 1-hour ozone standard: a deterministic test or a statistical test.

The deterministic test requires the State to compare predicted 1-hour daily maximum ozone concentrations for each modeled day<sup>5</sup> to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the 1-hour ozone standard allows exceedances. If, over a 3 year period, the area has an average of 1 or fewer ozone standard exceedances per year at any monitoring site, the area is not violating the standard. Thus, if the State models a severe day (considering meteorological conditions that are very conducive to high ozone levels and that should lead to fewer than 1 exceedance per year at any location in the nonattainment area and in the modeling domain over a 3 year period), the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard.

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet or attain the 1-hour standard. For example, a monitoring site for which the 4 highest 1-hour average concentrations over a 3 year period are 0.136 ppm, 0.130 ppm, 0.128 ppm, and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration level observed at a location that would be expected to occur no more than an average of once a year over a 3 year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites

<sup>5</sup> The initial, "ramp-up" days for each episode are excluded from this determination.

meeting the standard. Thus, these upper limits are rarely significantly higher than the attainment level of 0.124 ppm.

#### What Are the Additional Analyses That May Be Considered When the Modeling Fails To Show Attainment?

When the modeling does not conclusively demonstrate that the area will attain, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations and provides a means for considering other evidence to help assess whether attainment of the standard is likely. The process by which this is done is called a weight-of-evidence determination.

Under a weight-of-evidence determination, the State can rely on and EPA will consider factors such as: model performance and results, episode selection, other modeled attainment tests, e.g., relative reduction factor analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emission trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exhaustive list of factors that may be considered and these factors could vary from case to case. The EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the weight-of-evidence needs to be.

#### C. Framework for Proposing Action on the Attainment Demonstration SIP

Besides the Modeled Attainment Demonstration, What Other Issues Must Be Addressed in the Attainment Demonstration SIP?

In addition to the modeling analysis and weight-of-evidence determination

demonstrating attainment, the EPA has identified the following key elements which must be present in order for EPA to approve the 1-hour attainment demonstration SIP.

#### 1. Clean Air Act Measures and Other Measures Relied on in the Modeled Attainment Demonstration State Implementation Plan

To receive final approval of the attainment demonstration SIP, the State must have adopted the emission control measures required under the Act for the area's classification or must have established negative source declarations for the source categories for which the area has no major sources that are subject to Clean Air Act requirements for such sources. All required emission controls must be implemented prior to the beginning of the ozone season (April through October in the St. Louis area, 40 CFR part 58) in the area's attainment year to assure attainment of the ozone standard in the attainment year.

The attainment demonstration must incorporate the emission impacts of, and the SIP submittal must address the rule development for, any additional emission control measures needed to achieve attainment. The rules for these emission controls must also have been adopted before the EPA can finally approve the attainment demonstration. The emission controls for these sources must be implemented prior to the beginning of the ozone season in the attainment year.

For purposes of fully approving the State's SIP, the State must adopt and submit all VOC and NO<sub>x</sub> control regulations for affected sources within the State and within the local modeling domain as reflected in the adopted emission control strategy and as reflected in the attainment demonstration.

Table 1 presents a summary of the Clean Air Act requirements that need to be met for a moderate ozone nonattainment area for the 1-hour ozone standard. These requirements are specified in sections 182(b) and 182(f) of the Act. Information on additional measures that Illinois and Missouri have adopted and relied on in their SIP submissions is not shown in this table, but is addressed later in this proposed rule.

#### Table 1—Clean Air Act Requirements For Moderate Nonattainment Areas

- New Source Review (NSR) regulations for VOC and NO<sub>x</sub>, including an offset ratio of 1.15:1 and a major VOC and NO<sub>x</sub> source size cutoff of 100 tons per year (TPY)
- Reasonably Available Control Technology (RACT) for VOC and NO<sub>x</sub>

- 15 percent Rate-Of-Progress (ROP) plan for VOC through 1996
- 1990 baseline emissions inventory for VOC and NO<sub>x</sub>
- Periodic emissions inventory and source emission statement regulations
- Vehicle inspection and maintenance (I/M) program

#### 2. Motor Vehicle Emissions Budget

An attainment demonstration SIP must estimate the motor vehicle emissions that will be produced in the attainment year and must demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. For transportation conformity purposes, the estimate of motor vehicle emissions in a control strategy SIP such as an attainment demonstration (converted to a typical ozone season week day level) is defined as the motor vehicle emissions budget. The motor vehicle emissions budget must meet certain adequacy criteria which are listed in the Transportation Conformity Rule (40 CFR 93.118) before the budget can be approved as part of the attainment demonstration SIP. When a motor vehicle emissions budget is found to be adequate, it is used to determine the conformity of the transportation plans and programs to the SIP, as required by section 176(c) of the Act. The motor vehicle emissions budget must meet adequacy criteria (40 CFR part 93) before the attainment demonstration SIP can be approved. An appropriately identified motor vehicle emissions budget is a necessary part of an attainment SIP.

#### D. Criteria for Attainment Date Extensions

What Is EPA's Policy With Regard to an Ozone Attainment Date Extension?

The EPA's policy regarding an extension of the ozone attainment date for the St. Louis area is fully addressed in a EPA's initial notice of proposed rulemaking dated March 18, 1999. 64 FR 13384. The March 18, 1999 document proposed to reclassify the St. Louis area to a serious ozone nonattainment area, but also provided notice of the area's potential eligibility for an attainment date extension based on a July 16, 1998 EPA guidance memorandum. In today's document, EPA proposes to approve the States' request for an attainment date extension under that policy. The specifics of the attainment date policy are repeated below for clarity.

On July 16, 1998, a guidance memorandum entitled "Extension of Attainment Dates for Downwind Transport Areas" was issued by the EPA. That memorandum included

EPA's interpretation of the Act regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone standard and which are downwind of areas that have interfered with their ability to demonstrate attainment of the ozone standard by dates prescribed in the Act. That memorandum stated that the EPA will consider extending the attainment date for an area or a State that:

(1) has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind ozone nonattainment;

(2) has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows it will attain the 1-hour standard no later than the date that the emission reductions are expected from upwind areas under the final NO<sub>x</sub> SIP call (by 2003) and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind emission reductions;

(3) has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve attainment, assuming the emission reductions occur as required in the upwind areas; and

(4) has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

Once an area receives an extension of its attainment date based on ozone/precursor transport impacts, the area would no longer be subject to reclassification to a higher ozone nonattainment classification. If the St. Louis area is granted an attainment date extension, it would no longer be subject to a reclassification to serious nonattainment for ozone and no longer subject to the additional emission control requirements that would result from the reclassification to serious nonattainment.

Illinois and Missouri have requested an extension of the attainment date for the St. Louis nonattainment area in conjunction with the ozone attainment demonstration submittals. The ozone attainment demonstration considers 2003 as the revised ozone attainment year. The 2003 attainment year reflects the NO<sub>x</sub> emission control deadline

contained in the NO<sub>x</sub> SIP call and the NO<sub>x</sub> emission control deadline that EPA is considering to address section 126 petitions currently before it.

#### E. Criteria for NO<sub>x</sub> Control Exemptions

What Are the Clean Air Act Requirements and EPA Policy With Regard to NO<sub>x</sub> Emission Controls and Exemptions From the NO<sub>x</sub> Emission Control Requirements?

The State of Illinois has petitioned for an exemption from excess NO<sub>x</sub> emission reductions pursuant to section 182(f)(2) of the Act. The State is seeking an exemption from requirements for NO<sub>x</sub> Reasonably Available Control Technology (NO<sub>x</sub> RACT), New Source Review (NSR), and general conformity. The following discusses the Act requirements and EPA policy with regard to NO<sub>x</sub> emission controls and emission control exemptions, particularly as such policy deals with the Illinois petition.

Section 182(f)(1) of the Act requires SIPs to include emission control provisions for major stationary sources of NO<sub>x</sub> as required for major stationary sources of VOC. For moderate and above ozone nonattainment areas, this includes emission control requirements for NSR and RACT.

The portions of section 182(f)(1) relevant to St. Louis provide that the stationary source NO<sub>x</sub> requirements shall not apply where either of the following tests are met:

(1) in any area, the net air quality benefits are greater without the NO<sub>x</sub> reductions from the sources concerned; or

(2) in an ozone nonattainment area, additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the nonattainment area.

Section 182(f)(2) of the Act states that the application of the NO<sub>x</sub> emission reduction requirements may be limited to the extent necessary to avoid excess reductions of NO<sub>x</sub>.

The main tests for a NO<sub>x</sub> emissions control exemption under EPA policy are discussed in a December 1993 EPA guidance, *Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)*. This guidance was issued by the Office of Air Quality Planning and Standards of the EPA. This guidance notes that the EPA has determined, based on a review of the Act, that the excess reduction demonstration for a NO<sub>x</sub> emissions control exemption, under either a "contribute to attainment" test or a "net ozone benefits" test, must be tied to an area's ozone attainment demonstration SIP. For the reasons described in

Chapter 6 of the EPA guidance document, the excess reductions must be those NO<sub>x</sub> emission reductions in excess of the NO<sub>x</sub> emission reductions specified as being necessary for attainment in the attainment demonstration. The approval of the excess emissions reduction petition must be contingent on the final approval of the ozone attainment demonstration.

Details of the current EPA policy regarding NO<sub>x</sub> emission control exemptions and transportation conformity is contained in a November 14, 1995 final rule (60 FR 44790) amending the transportation conformity requirements. The final transportation conformity rule requires consistency with NO<sub>x</sub> motor vehicle emission budgets in control strategy SIPs regardless of whether a NO<sub>x</sub> control exemption has been granted. Areas must establish NO<sub>x</sub> emission budgets unless the State's modeled attainment demonstration shows that NO<sub>x</sub> emissions can essentially grow without limit due to new federally funded activities or federal actions without threatening attainment of the ozone standard.

Approval of a NO<sub>x</sub> emissions control exemption would provide a basis for eliminating the requirement to comply with the transportation conformity rule's build/no-build test and less-than-1990 test for NO<sub>x</sub>. The current Illinois submittal, however, does not request an exemption from transportation conformity NO<sub>x</sub> requirements. In addition, it should be noted that after an area receives approval to use a motor vehicle emissions budget for the purposes of conformity determinations, the use of a build/no-build test or a less-than-1990 emissions test is no longer pertinent. Therefore, an exemption from NO<sub>x</sub> requirements for the build/no-build test and less-than-1990 emissions test is not necessary once an area's motor vehicle emissions budget is approved (or found adequate) for use in transportation conformity determinations. The EPA is proposing the approval of Illinois' motor vehicle emissions budget in this document.

The requirements for exemption from the NO<sub>x</sub> control requirements of general conformity relevant to Illinois' request are found in section 182(f)(2) of the Act. Since section 182(f)(2) NO<sub>x</sub> control exemptions are based on a demonstration of "excess emission reductions," a NO<sub>x</sub> control exemption cannot be granted unless the State has made a clear showing through the ozone attainment demonstration that the emission reductions are indeed excess (that the attainment demonstration does not rely on such emission reductions)

or, where NO<sub>x</sub> emission increases (due to new federally-funded activities or federal actions) are expected to result from source growth due to an activity for which the NO<sub>x</sub> control exemption is sought, that NO<sub>x</sub> emissions can essentially increase without limit and still not cause ozone standard violations. Note that activities that are subject to conformity generally involve emission increases rather than emission decreases. For transportation conformity determinations, consistency with the motor vehicle emissions budget is the means for ensuring that increases in such emissions do not threaten attainment of the ozone standard. In contrast to transportation conformity, however, general conformity determinations are not based on consistency with an explicitly identified emissions budget, since quite often the SIP does not create such budgets for the emissions-generating activities that are subject to general conformity. Consequently, a NO<sub>x</sub> control exemption for general conformity cannot be granted under section 182(f)(2) of the Act unless the State has otherwise clearly demonstrated that NO<sub>x</sub> emissions can essentially increase without limit and still provide for attainment of the ozone standard.

The situation for NSR, under section 182(f)(2) of the Act, is analogous. Unless the State has otherwise clearly demonstrated that NO<sub>x</sub> emissions can essentially increase without limit due to new or modified major stationary sources, the NO<sub>x</sub> control exemption for NSR cannot be approved. A policy memorandum, "Scope of Nitrogen Oxides (NO<sub>x</sub>) Exemptions," dated January 12, 1995, and signed by G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch, EPA, explains that, where EPA grants a NO<sub>x</sub> exemption under the "excess reductions" provision, the exemption makes sense with respect to RACT but not necessarily with respect to NSR. The distinction would be that RACT emissions impacts are exclusively emission reductions, whereas NSR impacts often involve emission increases. It should be noted that NO<sub>x</sub> new source requirements in ozone nonattainment areas would revert to Prevention of Significant Deterioration (PSD) requirements (PSD allows emission increases, but only at a controlled rate) if an area is granted an exemption from NSR NO<sub>x</sub> requirements. Therefore, a NSR NO<sub>x</sub> control exemption request, under section 182(f)(2), must be supported by a demonstration that NO<sub>x</sub> emissions due to new or modified major stationary

sources can essentially increase in an area without limit and not cause ozone standard violations.

## II. Technical Review of the Submittals

### A. Summary of the State Submittals

#### 1. General Information

When Were the Ozone Attainment Demonstration State Implementation Plan Revisions Submitted to the Environmental Protection Agency?

Illinois and Missouri have made the following submittals, which in whole or in part concern the ozone attainment demonstration, a partial NO<sub>x</sub> control exemption for the Illinois portion of the St. Louis ozone nonattainment area, and an extension of the attainment date for the St. Louis ozone nonattainment area:

(a) In a submission dated November 10, 1999, the Missouri Department of Natural Resources (MDNR) submitted an ozone attainment demonstration along with several additional proposed SIP revisions. The additional SIP revisions included:

i. Regulations and associated documentation for the control of VOC emissions from: aerospace manufacture and rework facilities; volatile organic liquid storage; wood furniture manufacturing operations; batch process operations; reactor processes and distillation operations processes in the synthetic organic chemical manufacturing industry; and existing major sources;

ii. Regulations and associated documentation for the control of NO<sub>x</sub> emissions intended to meet NO<sub>x</sub> RACT requirements of the Act in the Missouri portion of the St. Louis nonattainment area;

iii. A 15 percent rate-of-progress plan for the control of VOC emissions in the Missouri portion of the St. Louis area; and

iv. An improved vehicle inspection and maintenance program.

The review of these additional SIP revisions is the subject of separate technical support documents and rulemakings. See 65 FR 8094, 65 FR 8060, 65 FR 8092, 65 FR 8097, and 65 FR 8083, February 17, 2000. Only the ozone attainment demonstration portions of the submittal are considered here;

(b) On November 15, 1999, the IEPA submitted a letter outlining the ozone attainment strategy for the St. Louis area and the State's emission control commitments;

(c) On January 19, 2000, the MDNR submitted an additional supplement to the ozone attainment demonstration. This supplement reflects revised

modeling which was performed at the recommendation of EPA to include future emission control measures in the St. Louis area, including Missouri's NO<sub>x</sub> RACT program, emission control contingency measures implemented by both States, and additional VOC RACT controls implemented by Missouri. The revised analysis also incorporates other emission inventory corrections based on quality assurance activities conducted by both States; and

(d) On February 10, 2000, the IEPA submitted its adopted ozone attainment demonstration SIP. This SIP revision submittal includes a petition for an exemption from NO<sub>x</sub> RACT, NO<sub>x</sub> NSR, and general conformity NO<sub>x</sub> requirements for the Illinois portion of the St. Louis ozone nonattainment area. This SIP revision also reflects the emission modifications and attainment demonstration revisions contained in MDNR's January 19, 2000 submittal.

When Were the Submittals Addressed in Public Hearings, and When Were the Submittals Formally Adopted by the States?

The MDNR held a public hearing on the attainment demonstration on October 28, 1999, and the Missouri Air Conservation Commission (MACC) adopted the attainment demonstration on November 8, 1999.

The IEPA held a public hearing on the attainment demonstration on November 15, 1999. A subsequent public hearing on the updated ozone attainment demonstration was not held. It must be noted, however, that the updated ozone attainment demonstration did not include additional emission controls in Illinois beyond those addressed in the November 15, 1999 public hearing.

What Modeling Approach Was Used in the Analyses?

Illinois and Missouri cooperatively conducted the modeling analyses and other analyses used to support the attainment demonstration. The modeling approach is documented in both Illinois' February 10, 2000 ozone attainment demonstration and in Missouri's November 10, 1999 ozone attainment demonstration submittal. Additional modeling analyses and weight-of-evidence analyses are addressed in Missouri's January 19, 2000 supplemental modeling submittal.

The heart of the modeling system and approach is the Urban Airshed Model—Version V (UAM-V), developed originally for application in the Lake Michigan area, but now applied in many other areas. This model was applied to a large grid system (referred to as Grid M) covering much of the upper

Midwest. Grid M was selected to cover many of the ozone precursor emission sources believed to affect the Lake Michigan area and the St. Louis area. Grid M was nested inside of a larger grid system covering the eastern half of the United States (the larger grid system includes areas referred to as the "coarse-grid states" in the OTAG process used to assess ozone transport in the eastern United States and the impacts of possible emission control measures to generally reduce interstate ozone and ozone precursor transport). The data derived from the larger OTAG grid provided air quality data for the perimeter of Grid M. It should be noted that for most of the attainment considerations, the States considered the peak ozone concentrations and model performance for a sub-portion of Grid M surrounding the St. Louis ozone nonattainment area (the local modeling domain). The conclusions discussed later in this document were based on data from this local modeling domain.

Besides being able to model ozone and other pollutants in nested horizontal grids, UAM-V can also model individual elevated source plumes within the modeling grid (plume-in-grid or PiG). Gaussian dispersion models are used to grow plumes until the plumes essentially fill grid cells. At these points, the numerical dispersion and advection components of UAM take over to address further downwind dispersion and advection.

The following input data systems and analyses were also used as part of the combined modeling system:

**Emissions:** UAM-V requires the input of an emissions inventory of gridded, hourly estimates of CO, NO<sub>x</sub>, and speciated VOC emissions (speciated based on carbon bond types). The States provided regional and local emission inventories, which were processed through the Emissions Modeling System—1995 version (EMS-95) to prepare UAM-V emissions data input files.

The initial emissions inventory files were based on EPA's NO<sub>x</sub> SIP call emissions inventory. Substantial revisions were made to the Missouri point source and mobile source inventories based on Missouri's comments on the NO<sub>x</sub> SIP call emissions inventories (Missouri has also made a number of additional attainment year emission inventory changes as documented in the January 19, 2000 submittal, discussed above). The State submittals describe in detail the procedures used to develop, and then project, the base year emission inventories to the 1995/1996 period and

to project emissions to account for growth and control through 2003.

An important deviation from the NO<sub>x</sub> SIP call inventory was the treatment of biogenic emissions emanating from the Ozark Mountain portion of Missouri. Initial UAM-V modeling results had indicated that biogenic emissions, consisting primarily of isoprene from oak trees, were overestimated in the UAM-V model. This determination was based on a recent study of biogenic emissions and related VOC concentrations in this area, referred to as the Ozark Isoprene Experiment (OZIE). Based on initial results from the OZIE study, the Ozark biogenic emissions predicted from the BEIS2 model have been adjusted downward 50 percent. Although the investigation of the Ozark biogenics is not yet completed, and the source of the overestimation is not yet determined, this gross adjustment to the inventory is acceptable in this instance because there is a general consensus between the States and EPA that the UAM-V modeling system clearly overestimates isoprene in this area.

**Meteorology:** Meteorological inputs for the UAM-V modeling system were developed through prognostic meteorological modeling (use of a set of dynamic equations that describe atmospheric motion and the distribution and change of meteorological parameters) using the RAMS3a modeling system developed by Colorado State University. A limited four-dimensional data assimilation was performed for all days modeled. RAMS3a output data were re-mapped to the three-dimensional grid structure of UAM-V.

The IEPA and MDNR have noted that typically there are three types of meteorological regimes associated with high ozone concentrations in the St. Louis nonattainment area. The first type of episode occurs when a surface high pressure system is centered to the east of the St. Louis area along the Ohio and Tennessee Valleys. This situation brings southerly wind flow into the area. High ozone in this situation is also associated with high surface temperatures in the upper 80's and 90's degrees Fahrenheit (°F) range and with relatively low wind speeds of less than 10 miles per hour. Precipitation and cloud cover are minimal.

The second type of high ozone episode is due to stagnation conditions, when surface winds are calm or with wind speeds less than 5 miles per hour. The wind direction is variable. The temperatures are relatively high, in the upper 80's or lower 90's.

The third type of episode occurs with the approach of a frontal system from the north. The front is generally weak with little or no moisture and little or no cloud cover. Temperature inversions often form near the surface, trapping pollutants near the surface and limiting pollutant dispersion.

The following summarizes the meteorology of the two episodes modeled for the final attainment demonstration:

**July 16-19, 1991:** On July 16, a migratory high pressure system arrived in central Pennsylvania producing light southerly winds in the St. Louis area. Hot, dry weather persisted during this period, with temperatures reaching 90 °F in the St. Louis area. For the July 17 through July 19 period, winds in the St. Louis area became southwesterly. Wind speeds strengthened by July 19 as a cold front approached from the northwest.

**July 10-14, 1995:** On July 10, a high pressure system was centered over Missouri, resulting in light and variable winds across the St. Louis area. By July 11 and 12, the high pressure system migrated eastward to the Tennessee Valley. Winds in the St. Louis area were southerly and peak temperatures were in the mid to upper 90's °F range. On July 13 and 14, the conditions at the surface remained the same with the high pressure system centered near the East Coast and dominating the meteorology in the Eastern and Central United States. Temperatures continued to peak in the upper 90's with relatively light southerly winds.

The RAMS3a system was relatively effective in modeling these meteorological conditions.

**Chemistry:** Atmospheric chemistry within the modeling grid system was simulated using the Carbon Bond-Version IV model developed by the EPA.

**Boundary and Initial Conditions:** For a 1996 base case evaluation, initial and boundary conditions were derived from extraction of data from a larger, 36 kilometer resolution OTAG coarse grid over the grid cells marking the edges of the Grid M domain. For the 2003 simulations, various NO<sub>x</sub> control levels were applied in the coarse grid runs to simulate the NO<sub>x</sub> impacts expected in the various States. For States subject to EPA's NO<sub>x</sub> SIP call NO<sub>x</sub> emission budgets (including the eastern third of Missouri, but excluding the western two-thirds of Missouri), NO<sub>x</sub> emission rates for Electric Generating Units (EGUs) were limited to 0.25 pounds per mmbTU in the modeling system's emissions data. For the western two-thirds of Missouri, an EGU NO<sub>x</sub> emission rate of 0.35 pounds per

mmBTU was assumed.<sup>6</sup> Only Act-required NO<sub>x</sub> control levels and Act-required VOC emission controls were considered for States not subject to EPA's NO<sub>x</sub> SIP call (tightened EGU NO<sub>x</sub> emission levels were not considered for these States).

**What High Ozone Periods Were Modeled?**

Three high ozone episodes, July 16–19, 1991, July 10–14, 1995, and June 27–29, 1996 were originally considered for the attainment demonstration. The 1996 episode was subsequently dropped due to unacceptable model performance.

In selecting the episodes to be modeled, the States followed the guidance provided by the EPA. The July 1991 ozone modeling guidance, *Guideline for Regulatory Application of the Urban Airshed Model*, recommends that episodes for modeling be selected to represent different meteorological regimes observed to correspond with ozone exceeding the standard. Both stagnation and transport conditions should be examined. A minimum of 3 primary episode days should be modeled. Primary episode days are those days for which ozone concentrations exceeding the standard were monitored in the area.

As noted in the discussion above, the high ozone episodes Illinois and Missouri selected and modeled have covered more than 3 primary episode days and have generally covered the types of meteorology observed along with high ozone in the St. Louis area.

**What Procedures and Sources of Projection Data Were Used To Project the Emissions to Future Years?**

To develop the attainment year (2003) EGU emissions, the States initially considered EPA's 2007 base case emissions developed for the NO<sub>x</sub> SIP call. EPA developed these emissions using the Integrated Planning Model (IPM). The 2003 base case emissions

were developed from this assuming a linear interpolation between the 1995/1996 base period emissions and EPA's 2007 base case emissions. A single growth factor was developed for each State to project the EGU emissions from the 1995/1996 base period to the 2003 base case levels. Subsequent emission control strategy tests altered the NO<sub>x</sub> emission limits for these projected source emissions.

For point source, non-EGU emissions, the States projected the 1995/1996 base period emissions to 2003 using BEA projections of Gross State Product (GSP). State-specific growth factors were used for Illinois based on the use of the Emissions Growth Analysis System (EGAS), which replaced EPA-supplied growth factors.

The 1995 stationary area and non-road emission inventories were projected to 2003 using BEA projections of GSP. These projections include the impacts of all applicable Clean Air Act required controls. The projected non-road emissions were adjusted to account for certain federal emission control requirements expected to be implemented by 2003, including: the federal small engine standards, Phase II; federal marine engine standards (for diesel engines of greater than 50 horsepower); federal locomotive standards; and non-road diesel engine standards.

Projections of on-road emissions from 1995/1996 to 2003 were accomplished by projecting Vehicle Miles Traveled (VMT) derived from the Highway Performance Monitoring System (HPMS) and by considering the VMT growth estimates derived by the EPA from the OTAG process. Travel demand VMT estimates for 2003 were also obtained for the St. Louis nonattainment area from the East-West Gateway Coordinating Council. The Illinois VMT growth estimates reflect a growth rate of 2.0 percent per year, and the Missouri VMT estimates reflect a growth of 23.5

percent between 1996 and 2003 (approximately 3 percent per year). Future emission reductions for on-road emissions were assumed to occur by 2003, including emission reductions resulting from: national low emissions vehicle standards; implementation of improved vehicle inspection and maintenance in the St. Louis Metropolitan Statistical Area (MSA); and reformulated gasoline in the Missouri portion of the St. Louis MSA.

Biogenic emissions were assumed to remain unchanged between 1995 and 2003.

All projected emissions were processed through EMS-95 to provide the emission inventory files for use in UAM-V.

**3. Modeling Results**

**How Did the States Validate the Photochemical Modeling Results?**

The States conducted a number of statistical analyses to compare the modeling system's ozone predictions to observed peak ozone concentrations for the base period. Using the preliminary base period emissions and meteorological inputs, the States derived statistics covering: unpaired peak prediction accuracy; normalized bias of data pairs; and gross errors of data pairs for each of the modeled high ozone episode days. These results were compared to acceptable accuracy ranges specified by the EPA. With a few exceptions, the current modeling results for the July 1991 and July 1995 episodes are in agreement with EPA-specified criteria. The results of the June 1996 episode modeling, however, did not meet the EPA-specified criteria, and the episode was, therefore, dropped from further consideration.

Table 2 presents a summary of the model performance statistics for the St. Louis ozone nonattainment area. These data were taken from Table 6.1 of Illinois' February 10, 2000 submittal.

TABLE 2.—MODEL OZONE PERFORMANCE STATISTICS ST. LOUIS NONATTAINMENT AREA

	July 1991				July 1995				
	7/16	7/17	7/18	7/19	7/10	7/11	7/12	7/13	7/14
Observed (ppb) .....	108	140	114	107	125	136	129	154	139
Modeled Base Year (ppb) .....	117	135	135	110	83	137	130	131	125
Normalized Bias (percent) .....	-31.5	-9.7	-14.6	-2.5	-44.3	-8.9	-4.1	-16.3	-5.1
Gross Error (percent) .....	33.1	30.6	28.0	19.9	45.6	32.3	26.1	23.7	23.0
Unpaired Peak Accuracy (percent) .....	8.6	-3.4	18.6	2.9	-32.9	1.4	1.3	-14.6	-14.1

<sup>6</sup>In *Michigan v. EPA*, the U.S. Court of Appeals for the District of Columbia generally upheld the NO<sub>x</sub> SIP call, but remanded EPA's determination to require NO<sub>x</sub> reductions from the entire State of Missouri. The Court explained that EPA had not

developed a sufficient record of evidence to support requiring emissions reductions from the entire State in light of modeling results that the OTAG interpreted as indicating that emissions from the western part of the State may not have a meaningful

impact on downwind nonattainment areas. *Michigan v. EPA*, No. 98-1497 (D.C. Cir. March 3, 2000).

The model performance statistics can be compared to EPA's recommended (July 1991, *Guideline for Regulatory Application of the Urban Airshed Model*) acceptable model performance statistics:

- Normalized Bias: ±5 to 15 percent
- Gross Error: 30 to 35 percent
- Unpaired Peak Accuracy: ±15 to 20 percent.

It can be seen that the modeling system does reasonably well and performs within acceptable performance ranges except for the leading days of the modeled episodes (the leading days are expected to exhibit poor model performance and are generally dropped from further consideration). The model does under predict some peak ozone levels, particularly on the highest ozone days of July 17, 1991 and July 13-14, 1995. The model over predicts ozone peaks on several other days, particularly on July 18, 1991. Nonetheless, the modeling system is judged to be performing adequately and in an acceptable manner to support emission control strategy considerations.

It should be noted that the above modeling statistics were derived using base year emissions that did not include the most recent emission revisions derived for 1996. The States updated the

ozone modeling to incorporate the 2003 emission changes, but did not update the modeling to incorporate the emission changes for the 1996 base year. The modeling performance statistics were not determined to account for this emissions revision. As explained later in this document, the States must update the modeling to include emission changes in the 1996 base year inventory and reconfirm that the plan demonstrates attainment before the EPA can approve the attainment demonstration.

A number of other tests and considerations were also given to the overall model performance. The performance evaluation considered the following statistical and graphical information:

- Tabular summary of model initial and final base case performance statistics;
- Comparison of the modeling output to the conceptual model for each episode;
- Spatial plots of peak daily and hourly surface concentrations;
- Time series plots of hourly concentrations for the monitors with the highest ozone concentrations each day; and
- Scatter plots of peak observed and predicted ozone concentrations.

These tests and considerations point to acceptable performance of the modeling system for the base period.

The States also compared the modeling results to a conceptual model and found the modeling results to comply with this conceptual model.

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

The ozone modeling system was run to simulate ozone concentrations on selected high ozone days in 1991 and 1995 using emissions for a base year (1996) and a future year (2003). The resulting St. Louis area ozone peaks for 1996 and 2003 are given in Table 3. Note that these modeled ozone peaks reflect the corrected 2003 emissions and modeling results as documented by Missouri in its January 19, 2000 submittal and by Illinois in its February 10, 2000 submittal. The 1996 base year modeled ozone concentrations do not reflect the corrected 1996 emissions. Therefore, the 1996 base year predictions in Table 3 must be reassessed following correction of the base year modeling to reflect the correction of the 1996 base year emissions.

TABLE 3.—PEAK OBSERVED AND MODELED OZONE CONCENTRATIONS (PPB) IN THE ST. LOUIS OZONE NONATTAINMENT AREA

Period Date	July 1991			July 1995			
	7/17	7/18	7/19	7/11	7/12	7/13	7/14
Peak Observed .....	140	114	107	136	129	154	139
1996 Base Modeled .....	135	135	110	137	130	131	125
2003 Post-Control Modeled .....	122	125	106	125	124	127	118

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

As noted in Table 3, application of the modeling system to the attainment year emissions through a deterministic approach does not demonstrate attainment of the 1-hour standard because 3 days are modeled to have potential exceedances of the standard. The application of the model in a deterministic approach, as reflected in this table, does not demonstrate attainment of the standard.

The States also considered the modeling results using a statistical approach. A statistical approach, as discussed in the June 1996 EPA guidance, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, permits some modeled exceedances, based on the severity (ozone conduciveness of a day's

meteorology) of the modeled episode days. Because the guidance leads to the conclusion that none of the modeled days were severe (as noted later, the IEPA and the MDNR do believe that 3 of the days are severe based on daily ozone maxima exceeding the area's ozone design value), the States concluded that the statistical approach could not be applied in this case.

Because the modeling fails to explicitly demonstrate attainment of the standard, the States considered additional evidence coupled with the results from the deterministic approach.

What Weight-of-Evidence Analyses and Determinations Are Used To Support the Modeled Attainment Demonstration?

A weight-of-evidence determination includes a subjective assessment of the confidence one has in the modeled

results. The more extensive and credible the corroborative information, the greater the influence it has in permitting deviations from the deterministic test's benchmark (modeled attainment at all receptor locations for all days modeled). As discussed in the June 1996 EPA guidance, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, the weight-of-evidence given to model results depends on the following factors: (1) Model performance; (2) confidence in the underlying data bases; (3) length of the projection period; and (4) how close the results come to demonstrating attainment for all receptor sites and times modeled (see Table S.1. of the June 1996 guidance for a complete list of factors affecting weight-of-evidence determinations and acceptance of model

results nearly passing the attainment tests).

The model performance and the severity of the modeled episodes are of particular note. Generally, the closer the modeled results come to meeting the deterministic test's benchmark, the less compelling other evidence supporting a deviation from the benchmark needs to be. Model results showing major improvement in predicted ozone levels can be used to support the acceptance of the attainment demonstration.

The more extreme the days selected for modeling (the more ozone conducive the meteorology considered), the greater the weight-of-evidence support that can be attributed to modeling results exceeding but nearly meeting the ozone standard. Daily ozone maxima exceeding an area's ozone design value is an acceptable surrogate for indicating that these days are extreme. July 17, 1991 and July 13-14, 1995 are high ozone days because the observed ozone levels on those days are greater than the area's ozone design value (4th highest daily maxima over 3 years). Demonstrating attainment on these extreme days implies greater ozone improvements than the model is predicting may be achieved. As noted above, the 2003 post-control modeling results are close to demonstrating attainment, but continue to show modeled exceedances on July 17, 1991, July 11, 1995, and July 13, 1995. Since the States believe that these days may be considered to be extreme ozone days, the States believe that some

consideration should be given to weight-of-evidence determinations. The observed July 11, 1995 peak observed ozone concentration is at the level of the area's ozone design value, and, therefore, IEPA and MDNR believe that this day should also be considered to be an extreme day, supporting the consideration of weight-of-evidence determinations. The EPA agrees that July 17, 1991 and July 13, 1995 are extreme ozone days and that this should be considered when making the determination. The EPA, however, does not agree that July 11, 1995 is extreme, since a day with a with a peak ozone concentration at the area's design value is not considered to be extreme.

The States discussed, and the EPA considered, the following factors and data in aggregate in assessing whether the States have provided sufficient evidence to support the attainment demonstration despite the modeled exceedances of the ozone standard. EPA's decision was based on a composite of the information, not on a single element of the "weight-of-evidence."

*Reduction of Predicted Exceedances:* Modeling for the 1996 base case showed a total of 418 grid cell-hours that exceeded the 1-hour ozone standard during the 7 modeled days. For the 2003 post-control estimates, only 15 grid cell-hours of exceedances were modeled. This was determined to be a 97 percent improvement in ozone air quality relative to the 1-hour standard. The States note that this improvement

exceeds the 80 percent improvement criteria contained in one of the benchmarks of EPA's recommended statistical attainment demonstration approach. This finding suggests that the attainment strategy will result in a significant improvement in ozone air quality.

*Relative Reduction Factor Attainment Test:* The States applied a relative reduction factor approach recommended by the EPA for addressing attainment of the 8-hour ozone standard. ("Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS," Final Draft, Office of Air Quality Planning and Standards, EPA, April 1999.) In this approach, the relative changes in ozone design values for various monitoring sites are determined using the relative changes in ozone concentrations predicted by the modeling system in the vicinity of these monitoring sites. All predicted future design values for the attainment year must be less than 125 ppb to support the attainment demonstration.

The States based the relative reduction factor approach on the ozone design values at monitoring sites for the 1995-1997 period. The relative reduction factors (actually ozone adjustment factors of 1 minus the modeled fractional ozone changes due to emission changes) were determined from the 1996 and 2003 modeling results. Based on these analysis values, the results in Table 4 were obtained.

TABLE 4.—RELATIVE REDUCTION FACTOR RESULTS

Monitor locations		1-Hour design values 1995-1997	Ozone adjustment factor	Future design values (ppb)
State	County			
Illinois .....	Madison .....	128	0.91	116
	St. Clair .....	108	0.92	99
Missouri .....	Jefferson .....	125	0.98	122
	St. Charles .....	131	0.92	120
	St. Louis .....	119	0.98	116

The States believe that the relative reduction factor analysis demonstrates that attainment of the ozone standard is likely in 2003 because all of the resulting future design values as shown in Table 4 are below the ozone standard. However, this analysis reflects modeling results for 1996 based on emissions subsequently revised by the States. As noted above, the 1996 modeling was not revised to reflect the subsequent change in 1996 emissions, whereas the 2003 post-control modeling was revised to reflect emission changes. This discrepancy has led to biased modeling

results. This analysis must be revisited once the 1996 base year modeling is corrected to reflect the corrected 1996 base year emissions.

*EPA Additional Emission Reductions Calculation:* At the request of the EPA, the States also applied an additional emission reductions calculation as described in the EPA guideline document, *Guidelines for Improving Weight-of-Evidence Through Identification of Additional Emission Reductions, Not Modeled*. This method also uses an ozone adjustment factor approach to project a monitored ozone

design value to an attainment year level. This method is based on the use of an area-wide maximum design value and an ozone adjustment factor based on relative changes in modeled peak ozone concentrations within and downwind of the nonattainment area. If the projected design value is greater than or equal to 125 ppb, this method also leads to estimates of additional VOC and NO<sub>x</sub> emission reductions needed beyond the selected/modeled control strategy to attain the ozone standard. If the projected design value is less than or

equal to 124 ppb, this result supports the attainment demonstration.

To obtain the base design value, the States averaged the area-wide design values for four 3-year periods, 1993–1995, 1994–1996, 1995–1997, and 1996–1998. This was done to account for the fact that the base period emissions cover both 1995 and 1996. The design value periods considered contained both of these years. The averaging of these design values also provides a more robust estimate of a base design value and addresses changes in meteorology. The base ozone design value was determined to be 133.5 ppb.

The ozone adjustment factor was determined by averaging the modeled area-wide peak ozone concentrations for the local modeling domain for 1996 and 2003 and taking the ratio of these averages, 2003 to 1996. An ozone adjustment factor of 0.932 was determined using this procedure.

The base ozone design value and the ozone adjustment factor lead (133.5 ppb multiplied by 0.932) to a future design value of 124.4 ppb. This result, while preliminary, shows that the control strategy is adequate to achieve the ozone standard. This determination, however, must be reassessed once the 1996 base year modeling is repeated to reflect the corrected 1996 base year emissions.

**Trends Analyses:** The MDNR and IEPA have determined or estimated the emission trends for the St. Louis nonattainment area for the years of 1990 through 2003 for both VOC and NO<sub>x</sub>. The emission trends are plotted in Figures 7.1 and 7.2 of IEPA's February 10, 2000 attainment demonstration submittal. The trends exhibit a significant decrease in VOC and NO<sub>x</sub> emissions within the St. Louis nonattainment area since 1990. Emissions of NO<sub>x</sub> and VOC are expected to continue to decline through 2003 due to both State and federal emission control requirements. This includes the impacts of the States' 15 percent Rate-Of-Progress plans, implementation of VOC RACT in both States, implementation of NO<sub>x</sub> RACT in Missouri, title IV (Clean Air Act) acid rain control requirements for EGUs, new vehicle I/M programs in both Illinois and Missouri, and reformulated gasoline use.

The States have considered air quality trends for 1977 through 1998. Significant downward trends in peak ozone levels have occurred since the early 1980s. The trend in peak ozone levels, however, have leveled off at above-standard levels in the last few years. Nonetheless, the States also note the improvement in air quality relative to the number of days per year

considered to be meteorologically conducive to high ozone formation. The States compared the trend of the number of exceedance days per year to the number of conducive days per year for 1977 through 1998. The number of conducive days was determined by estimating the number of days with meteorology meeting the following parameters: (1) Maximum temperatures exceeding 85 degrees Fahrenheit; (2) wind speeds less than 10 miles per hour; (3) solar radiation exceeding 500 Langleys; (4) little or no precipitation; and (5) winds from the southeast to west. The number of exceedance days per year relative to the number of conducive days per year was found to decline significantly over the years. This downward trend is believed to be due to the implementation of emission controls.

The States have also considered the trend in background ozone concentrations for 1989 through 1998. Background ozone concentrations, reflecting ozone transport into the St. Louis area rather than local ozone impacts, have been found to trend upward over the most recent years (1992–1998), pointing to the need to control ozone transport. This ozone transport is believed, based on the ozone modeling, to play a significant role in the ozone standard exceedances in the St. Louis ozone nonattainment area.

Analyses of regional NO<sub>x</sub> emissions from Illinois, Indiana, Kentucky, Missouri, Ohio, and Tennessee and outside of the St. Louis ozone nonattainment area shows an upward trend over the period of 1985 through 1997, with 1997 total NO<sub>x</sub> emissions being 16 percent higher than in 1985. Illinois and Missouri note that the upward trend in upwind regional NO<sub>x</sub> emissions corresponds to the trend in increased background ozone concentrations. This observation lends credence to the selected control strategy of controlling regional NO<sub>x</sub> emissions.

The States' analyses of air quality and emission trends do provide some support for the States' attainment demonstration. Progress in air quality improvement through the current period (1997–1999) is demonstrated and future progress in air quality improvement is shown to be likely. In addition, these analyses lend support to a regional NO<sub>x</sub> reduction as a reasonable approach to achieving attainment of the ozone standard. Nonetheless, the air quality and emission trends by themselves do not provide an adequate weight-of-evidence determination and do not demonstrate that the ozone standard will be attained by 2003. They simply

demonstrate that the States have made progress towards attaining the standard and are expected to continue to make such progress.

**EPA's NO<sub>x</sub> SIP Call Modeling:** The States note that the EPA recommends that States use the results of EPA's NO<sub>x</sub> SIP call modeling as part of the weight-of-evidence for the ozone attainment demonstrations. Based on the NO<sub>x</sub> SIP call modeling, the post-control St. Louis area maximum ozone design value is projected to be 124 ppb at the St. Charles County monitoring site in 2007 (subsequent modeling, incorporating additional emission improvements expected to result from Tier II vehicle emission standards and the use of low-sulfur gasoline, indicates even lower ozone levels in the St. Louis area in 2007). It should be noted, however, that the NO<sub>x</sub> SIP call modeling considered NO<sub>x</sub> emission controls that go beyond the level of NO<sub>x</sub> controls contained in the States ozone attainment strategy. The NO<sub>x</sub> SIP call modeling supports the direction of controls in the States' control strategy (emphasis on regional NO<sub>x</sub> controls).

Since the NO<sub>x</sub> SIP call will lead to lower ozone levels in the St. Louis area than the States' selected emission control strategy, EPA believes that this is additional evidence in support of the States' attainment demonstration. As noted above, the deterministic approach failed to unequivocally demonstrate attainment of the 1-hour standard. The modeling employed by the States assumed NO<sub>x</sub> emission limits higher than those that were assumed in the development of the NO<sub>x</sub> SIP call (regional NO<sub>x</sub> control levels of 0.25 pounds/mmBTU for EGUs in the States' attainment demonstration versus 0.15 pounds/mmBTU for EGUs along with other regional NO<sub>x</sub> controls in the NO<sub>x</sub> SIP call). As a consequence, the NO<sub>x</sub> SIP call will produce lower ozone transport levels than the control strategy submitted by the States. As noted above, in *Michigan v. EPA*, the U.S. Court of Appeals for the District of Columbia generally upheld the NO<sub>x</sub> SIP call, but remanded EPA's determination to require NO<sub>x</sub> emission reductions from the entire State of Missouri. *Michigan v. EPA*, No. 98–1497 (D.C. Cir. March 3, 2000). Since sensitivity analyses have shown that lower ozone interstate transport levels result in lower peak ozone levels in the St. Louis area, we expect the implementation of the NO<sub>x</sub> SIP call to result in greater improvement in the ozone levels than predicted in the States' attainment demonstration modeling, which only assumed NO<sub>x</sub> emission limits of 0.25 pounds per mmBTU for EGUs in upwind States.

This factor lends support to the States' attainment demonstration and supports the view that the combination of NO<sub>x</sub> SIP call controls and the emission controls selected by the States should bring the St. Louis area into attainment of the 1-hour ozone standard.

#### 4. Emission Control Strategies

##### What Emission Control Strategies Were Considered in the Attainment Demonstration?

Illinois' emission control strategy relies on the Clean Air Act emission control requirements through 2003, including the impacts of the State's 15 percent Rate-Of-Progress (ROP) plan for the Illinois portion of the St. Louis ozone nonattainment area, federal emission controls expected to be implemented by 2003, and a statewide NO<sub>x</sub> emission limit of 0.25 pounds/mmBTU for EGUs of generating capacity greater than 25 MWe. The NO<sub>x</sub> emission limit for EGUs only applies during the ozone season (May 1 through September 30). Illinois is in the process of developing state-wide NO<sub>x</sub> emission control regulations to cover this NO<sub>x</sub> limit. Further, it must be noted that Illinois has committed to tighten this NO<sub>x</sub> limit even further if required to attain the ozone standard in the Lake Michigan area. Illinois is also assessing the impacts of regional NO<sub>x</sub> controls on ozone transport into the Lake Michigan area, where Illinois must also attain the 1-hour standard. If modeling indicates that EGU NO<sub>x</sub> emission limits must be tightened beyond 0.25 pounds/mmBTU to attain the ozone standard in Lake Michigan area, Illinois is committed to completing rule development to achieve the more stringent NO<sub>x</sub> emission limits. If more stringent NO<sub>x</sub> emission limits are adopted, this will further lower ozone levels in the St. Louis area. At minimum, the State will adopt an EGU NO<sub>x</sub> emission limit of 0.25 pounds/mmBTU regardless of the modeling outcome for the Lake Michigan area.<sup>7</sup>

Missouri's emission control strategy also relies on the Clean Air Act emission control requirements through 2003, including impacts of the State's 15 percent ROP plan, and regional NO<sub>x</sub> emission limits for EGUs. The NO<sub>x</sub> emission limits are differentiated between two portions of the State, with a NO<sub>x</sub> emission limit of 0.25 pounds/mmBTU in the eastern third of the State and a NO<sub>x</sub> emission limit of 0.35 pounds/mmBTU in the western two-thirds of the State. The emission control strategy also considers the emission impacts of the following control

measures: VOC emission reductions from implementation of RACT on various sources (see the discussion of the contents of Missouri's November 10, 1999 submittal above); NO<sub>x</sub> RACT in the Missouri portion of the St. Louis ozone nonattainment area; and an improved vehicle I/M program.

The emissions control strategy also assumes that all other States in the "fine grid" area of the OTAG analysis (those States subject to NO<sub>x</sub> emission budgets in EPA's NO<sub>x</sub> SIP call) would also limit NO<sub>x</sub> emissions from EGUs to 0.25 pounds/mmBTU. Again note that this differs from the EGU NO<sub>x</sub> emission rate of 0.15 pounds/mmBTU considered for these sources in EPA's NO<sub>x</sub> SIP call and considered by EPA to be acceptable for background ozone considerations. Illinois and Missouri believe that these States should be assumed to implement NO<sub>x</sub> emission limits no tighter than those considered for Illinois and Missouri in the attainment demonstration and has reflected such thinking in the attainment demonstration. Nonetheless, implementation of the NO<sub>x</sub> SIP call will further lower ozone levels in the St. Louis area, adding weight-of-evidence and a margin of safety to the States' attainment demonstration.

##### Have the States Adopted the Selected Emission Control Strategies and Have the States Adopted the Emission Control Regulations Needed To Implement the Emission Control Strategies?

The States have adopted the emission control strategies and all associated emission control regulations except the state-wide NO<sub>x</sub> emission limits for EGUs. Both States are expected to complete development of proposed NO<sub>x</sub> emission control regulations for the EGUs by mid-2000 and have final adopted rules no later than December 2000. Note that the EPA would not finally approve the attainment demonstration until after it has determined that the statewide NO<sub>x</sub> control regulations are acceptable.

Missouri submitted additional emission control regulations needed to implement the control strategy with the November 10, 1999 submittal. These regulations include NO<sub>x</sub> RACT, additional VOC RACT, and the regulations required to implement the State's 15 percent rate-of-progress plan. These regulations are undergoing separate review and have been proposed for approval as noted elsewhere in this document.

Illinois has completed all VOC emission control regulations and has submitted these regulations to the EPA. All of these VOC emission control

regulations have been previously approved by the EPA.

##### Have the States Adopted all Emission Control Regulations Required by the Clean Air Act?

Illinois and Missouri have adopted all VOC emission control requirements required under the Clean Air Act for a moderate ozone nonattainment area. As noted above, some of these emission control regulations are currently under review by the EPA. The final approval of the ozone attainment demonstration is contingent on the final approval of these regulations.

As noted above, the States have yet to complete the regional, statewide NO<sub>x</sub> emission control regulations needed to complete the ozone control strategy. Final approval of the attainment demonstration is contingent on the adoption of these rules. In the alternative, this proposed rulemaking proposes to disapprove the ozone attainment demonstration if the States fail to submit the proposed regional, statewide NO<sub>x</sub> control regulations by June 2000 and final adopted regional, statewide NO<sub>x</sub> control regulations by December 2000. The attainment demonstration will also not be finally approved if the EPA review of the regional NO<sub>x</sub> emission control regulations, which will be the subject of a separate rulemaking, concludes that they are not approvable.

#### 5. Transportation Conformity

##### Did the States Address Transportation Conformity in the Submittals and Did the States Adopt Motor Vehicle Emission Budgets?

Both Illinois and Missouri have submitted motor vehicle emissions budgets for the 2003 attainment year in their respective portions of the St. Louis ozone nonattainment area. These emission budgets must meet the adequacy criteria in the Transportation Conformity Rule before the budgets and the attainment demonstration are approved.

The IEPA has submitted an emissions budget of 28.70 tons per day for VOC and 40.64 tons per day for NO<sub>x</sub> in the Illinois portion of the nonattainment area (the Metro-East area). This budget has been posted to the EPA web site for public comment and has been under adequacy review since its submittal to the EPA. The EPA review of this emissions budget has found that the budget meets all of the adequacy criteria in section 93.118 of the Transportation Conformity Rule. These criteria include: (1) The SIP was endorsed by the Governor (or his designee) and was

<sup>7</sup> Illinois will also need to adopt controls as necessary to respond to the NO<sub>x</sub> SIP call.

subject to a State public hearing; (2) consultation among federal, State, and local agencies occurred; (3) the emissions budget is clearly identified and precisely quantified; (4) the motor vehicle emissions budget, when considered together with all other emissions, is consistent with attainment; and (5) the motor vehicle emissions budget is consistent with and clearly related to the emissions inventory and control strategy in the submitted attainment demonstration. The EPA is also required to consider comments submitted to the State at the public hearing. No comments were received by the State on the transportation conformity budgets. Also, no comments were received on the Illinois budget during the adequacy posting.

The EPA is proposing in this document to approve the transportation conformity budget submitted by Illinois. Comments on this proposed approval should be submitted to the docket as outlined in the comments section of this document.

The MDNR included an emissions budget in its November 10, 1999 submittal. An error in the emission estimates was subsequently detected during the interagency consultation process. The MDNR is revising the motor vehicle emissions budget, which will be addressed in subsequent EPA rulemaking. The new Missouri motor vehicle emissions budget will be posted on EPA's adequacy web site (go to <http://www.epa.gov/otaq/traq/> and click on "conformity," then click on "adequacy web pages") when it is received.

As noted elsewhere in this document, Missouri must submit a final motor vehicle emissions budget which the EPA can determine to be adequate for conformity assessments (Illinois has already met this requirement) to avoid disapproval of the attainment demonstration SIP. Consistent with the schedule for submission of revisions to the States' attainment demonstration, described previously in this document, Missouri must submit any proposed revisions to its motor vehicle emissions budget no later than June 30, 2000. Although these emissions budgets are undergoing separate adequacy review, it should be noted that the ozone attainment demonstration will not be given a final approval until the EPA has determined these emissions budgets to be adequate to support future transportation conformity reviews.

#### 6. Petition for NO<sub>x</sub> Control Exemption

The February 10, 2000, IEPA submittal contains a petition for an exemption from NO<sub>x</sub> emission reduction

requirements that are contained in section 182(f)(1) of the Act. The IEPA requests that this exemption apply to the RACT, NSR, and general conformity NO<sub>x</sub> requirements for the Illinois portion of the St. Louis nonattainment area pursuant to section 182(f)(2) of the Act. This exemption is based on Illinois' assertion that it has demonstrated attainment of the ozone standard without the need to account for these NO<sub>x</sub> emission controls. Therefore, Illinois contends that these NO<sub>x</sub> emission controls must be considered to be "excess" and subject to an exemption under section 182(f)(2) of the Act.

Illinois believes that the ozone attainment demonstration provides the requisite technical support for this petition. The NO<sub>x</sub> emission reductions in the attainment demonstration and control strategy in Illinois are limited to the NO<sub>x</sub> emission reductions from EGUs or other Act-required emission controls not subject to this petition. Illinois contends (Missouri has not made a similar argument) that the ozone impacts in the St. Louis area resulting from NO<sub>x</sub> emissions are dominated by the impacts of regional NO<sub>x</sub> emissions from EGUs, and that controlling local NO<sub>x</sub> emissions for other source categories would not significantly impact ozone levels. Illinois believes that it has shown in the ozone attainment demonstration modeling that application of the specific section 182(f) NO<sub>x</sub> control requirements would not meaningfully contribute to attainment of the ozone standard. Review of the modeling documentation supplied to the EPA, however, does not show the specific impacts of NO<sub>x</sub> RACT, NO<sub>x</sub> NSR, or NO<sub>x</sub> general conformity requirements. The modeling used to support the attainment demonstration does consider the impacts of NO<sub>x</sub> emission reductions resulting from NO<sub>x</sub> RACT implementation in the Missouri portion of the St. Louis nonattainment area.

It should be noted that Missouri has adopted NO<sub>x</sub> RACT regulations for the St. Louis area and is not seeking an exemption from NO<sub>x</sub> RACT, NO<sub>x</sub> NSR, or NO<sub>x</sub> general conformity requirements. The modeling used to support the attainment demonstration does consider the impacts of NO<sub>x</sub> emission reductions resulting from NO<sub>x</sub> RACT implementation in the Missouri portion of the St. Louis nonattainment area.

#### B. Environmental Protection Agency Review of the Submittals

##### 1. Adequacy of the States' Demonstrations of Attainment

Did the States Adequately Document the Techniques and Data Used to Derive the Modeling Input Data and Modeling Results?

The submittals from the States thoroughly documented the techniques and data used to derive the modeling input data. The submittals adequately summarized the modeling outputs and the conclusions drawn from these model outputs. The submittals adequately documented the States' weight-of-evidence determinations and the bases for concluding that these determinations adequately support the attainment demonstration.

Did the Modeling Procedures and Input Data Used Comply With the Environmental Protection Agency Guidelines and Clean Air Act Requirements?

Yes. The modeling procedures and input meet the requirements of EPA's July 1991 and June 1996 ozone modeling guidelines.

Do the Weight-of-Evidence Determinations Support the Attainment Demonstration?

The weight-of-evidence determinations, when viewed in aggregate, show that the demonstration of attainment may be adequate for proposed approval. An issue, however, must be taken with several critical portions of the weight-of-evidence determinations, namely with the relative reduction factor results and the additional emission reductions calculation. As noted above, MDNR revised the emission inventories for 2003. Based on these emission inventory revisions, the modeling for 2003 was revised. Such a modeling revision, however, was not performed for 1996 despite that fact that the 1996 emissions should also be revised. This may have resulted in a modeling bias in the results of the 2003 ozone estimates relative to those of 1996 as modeled. This has led to errors in the estimation of relative reduction factors and, therefore, may potentially impact the predicted future ozone design value for the area.

Comparison of 2003 attainment demonstration emissions as submitted in Illinois' draft October 15, 1999 attainment demonstration with the 2003 attainment demonstration emissions as documented in the February 10, 2000 submittal shows that the nonattainment area VOC emissions have been

decreased by approximately 60 tons per day and that the nonattainment area NO<sub>x</sub> emissions have been increased by approximately 6 tons per day. These emission changes incorporate both post-1996 emission reductions as well as changes in emission factors and calculation procedures. It is the changes in emission factors and calculation procedures that would also apply to the 1996 emissions. From the data provided, it is impossible to determine the magnitude of the emission changes that would have to be applied to the 1996 emissions. Again, this may potentially impact the predicted future design value, which is a key component of the weight-of-evidence argument. Accordingly, the States must revise the ozone modeling for 1996 using the updated 1996 emissions and must reassess the results for the relative reduction factor calculations and the additional reductions test.

It is inappropriate to conclude at this time that the demonstration of attainment has fallen short or that the selected emission control strategy is inadequate. The States are being given an opportunity to reassess the 1996 modeling results and the associated relative reduction predictions. It is not expected to take more than a few months for the States to perform this analysis. If the reassessment of modeling results causes the States to significantly modify the attainment strategy, the EPA will re-propose rulemaking on attainment demonstration SIP revisions, and will seek new public comments on the revised SIP revisions.

## 2. Adequacy of the Emission Control Strategies

### Do the Emission Control Strategies Meet the Requirements of the Clean Air Act?

Given the data presented, the selected emission control strategy may be adequate to achieve attainment of the 1-hour ozone standard. However, due to the need to reassess the weight-of-evidence determination, the EPA reserves final judgement on the emissions control strategy until after it has had an opportunity to review the revised 1996 ozone modeling results and the revised weight-of-evidence determinations (the revised relative reduction factor estimates and the revised additional reductions test results).

### Do Emission Control Shortfalls Exist With Regard To Probable Attainment of the Ozone Standard?

To determine whether there is a shortfall in emission controls, the need

for revised 1996 base year modeling must first be addressed. Corrections to the 1996 base year emissions inventory will result in changes to the predicted daily maxima which are presented in Table 3. Again, the EPA can not fully approve the attainment demonstration or act on the attainment date extension request until these analyses have been completed and demonstrate attainment of the standard consistent with the Act and EPA policy.

### Have the States Specified and Adopted Acceptable Motor Vehicle Transportation Conformity Budgets?

The States have submitted motor vehicle transportation conformity emission budgets. The budget submitted by the IEPA for Illinois portion of the St. Louis nonattainment area has been found to meet the adequacy criteria and is proposed for approval. The budget submitted by the MDNR needs to be revised and resubmitted. The attainment demonstration will not be approved until adequate motor vehicle emissions budgets are submitted and determined to be adequate. The EPA is proposing in the alternative to disapprove the attainment demonstration if Missouri does not submit the motor vehicle emissions budget in accordance with the schedule specified above.

### 3. Adequacy of the Requests for Extension of the Attainment Date

The policy for the extension of an ozone attainment date is discussed above. The States' compliance with these requirements is discussed here.

#### a. Identification of the Area as a Downwind Area Affected by Ozone Transport

The States have cited EPA's NO<sub>x</sub> SIP call modeling and analyses documented in the OTAG process to demonstrate that the St. Louis ozone nonattainment area is affected by an upwind area in another State that significantly contributes to ozone nonattainment in St. Louis. Kentucky is the State outside of Illinois and Missouri that contributes to ozone concentrations in the St. Louis area. On December 17, 1999, EPA took final action on petitions from 8 northeastern States under section 126 of the Act. In its action, EPA granted those portions of the petitions for sources for which it made affirmative technical determinations with respect to the 1-hour ozone standard. These included sources in Kentucky that make significant contributions to ozone levels in the St. Louis area. In addition, Illinois and Missouri have noted the trend towards increasing transport of ozone into the area from upwind States.

The EPA proposes to find that the States' demonstration of ozone transport meets the criteria in EPA's attainment date extension policy.

#### b. Submittal of an Approvable Attainment Demonstration

EPA's review of the attainment demonstration shows that, with the required changes EPA has specified, it is likely to be approved. In addition, the States have adopted the emission control measures (RACT, I/M, and other 15 percent Rate-Of-Progress plan requirements) or are expected soon to adopt the necessary emission control measures (regional NO<sub>x</sub> emission controls) needed to achieve attainment.

#### c. Adoption of all Applicable Local Measures Required Under the Area's Current Ozone Classification

Missouri has completed the adoption of all local measures required by the Act for the area's current classification. Illinois has adopted the necessary local measures, with the exception of NO<sub>x</sub> RACT. If EPA approves Illinois' request for an exemption from the NO<sub>x</sub> RACT requirements, as discussed elsewhere in this document, this element will have been met.

Both States must adopt and submit regional NO<sub>x</sub> regulations to complete the requirements for the attainment SIP. Proposed regional NO<sub>x</sub> regulations are expected to be developed by June 2000 and final regional NO<sub>x</sub> regulations must be adopted and submitted by December 2000.

EPA concludes that the States are likely to meet this requirement. It is noted, however, that the final determination on this issue must wait until all necessary rules, and the NO<sub>x</sub> RACT exemption request, have been approved by the EPA.

#### d. Implementation of all Adopted Measures by the Time Upwind Controls are Expected.

In anticipation of the implementation of upwind regional NO<sub>x</sub> controls in 2003 (the NO<sub>x</sub> SIP call requires implementation of NO<sub>x</sub> controls by May 15, 2003), Illinois and Missouri selected this year as the new attainment period for the St. Louis area in keeping with EPA's attainment date extension policy. Both States have committed to fully implement the regional NO<sub>x</sub> controls by 2003 (these NO<sub>x</sub> emission controls must be implemented prior to the start of the ozone season in 2003) and are expected to have implemented the other control measures prior to that date. Therefore, the States have met or will meet this condition.

The EPA concludes that, at the present time, the States are likely to meet the conditions for an attainment date extension and are in the process of concluding efforts to meet these conditions. Final resolution of this issue, however, will not occur until the States have corrected the noted problem with the attainment demonstration and have adopted the required regional NO<sub>x</sub> regulations.

EPA believes that it is likely that Illinois and Missouri will be able to meet the criteria for obtaining an attainment date extension under the conditions contained in EPA's July 16, 1998 attainment date extension policy. If this occurs, the attainment date for the St. Louis area is proposed to be extended to November 15, 2003. Even though the regional NO<sub>x</sub> controls will be implemented by the start of the ozone season in 2003, this later attainment date recognizes that the States' attainment demonstration does consider other VOC and NO<sub>x</sub> emission reductions that will continue to occur throughout the ozone season in 2003.

If the States do not correct the attainment demonstration, do not adopt approvable regional NO<sub>x</sub> emission control regulations, or otherwise fail to meet the conditions of the attainment date extension policy, EPA will take final action on the proposed reclassification described in EPA's March 18, 1999 document (64 FR 13384). To the extent that comments received on the March 18, 1999 document, and comments received on EPA's March 25, 1999 document, "Extension of Attainment Dates for Downwind Transport Areas," 64 FR 14441, are applicable to this rulemaking, EPA will address and respond to these comments in its final rulemaking action.

#### 4. Adequacy of the NO<sub>x</sub> Control Exemption Request has Illinois Adequately Supported its Request for an Exemption From the Requirement for NO<sub>x</sub> emission Control Regulations?

The IEPA has requested an exemption from additional NO<sub>x</sub> RACT, NSR, and general conformity requirements under section 182(f) of the Clean Air Act based on its contention that the selected emissions control strategy leads to attainment of the ozone standard without these additional NO<sub>x</sub> emission reductions or NO<sub>x</sub> emission control measures in the Illinois portion of the nonattainment area. Review of the attainment demonstration against EPA's NO<sub>x</sub> exemption policy discussed above shows that the request for a NO<sub>x</sub> control exemption may be granted in part. NO<sub>x</sub> RACT emission reductions in the

Illinois portion of the nonattainment area are not needed for attainment of the 1-hour ozone standard, based on the current modeled ozone attainment demonstration. Illinois, however, will need to show that its request for a NO<sub>x</sub> RACT exemption is still supportable after the States revise the 1996 base year modeling and show that the emissions control strategy selected still results in attainment without assuming NO<sub>x</sub> RACT for Illinois sources. Since NO<sub>x</sub> RACT clearly impacts NO<sub>x</sub> emissions through NO<sub>x</sub> emission reductions and the attainment demonstration, as it currently exists, does not rely on these types of NO<sub>x</sub> emission reductions in the Illinois portion of the St. Louis nonattainment area, Illinois has demonstrated that a NO<sub>x</sub> RACT exemption is justified under section 182(f)(2) of the Act. Although NO<sub>x</sub> RACT would lead to NO<sub>x</sub> emission reductions, possibly leading to further ozone reductions, Illinois has demonstrated that additional local NO<sub>x</sub> emission reductions in the Illinois portion of the nonattainment area are not needed to demonstrate attainment of the ozone standard in the St. Louis area.

Section 182(f)(2) of the Act gives States the flexibility to limit application of the NO<sub>x</sub> control requirements to the extent that any portion of these emission reductions are demonstrated to result in "excess reductions." In this case, the modeling of the adopted emission control strategy demonstrates that application of NO<sub>x</sub> RACT in the Illinois portion of the nonattainment area would result in NO<sub>x</sub> emission reductions in excess of those needed to attain the ozone standard. Therefore, these emission reductions are not required.

As noted above, the support for a NO<sub>x</sub> control exemption pursuant to section 182(f)(2) of the Act must be based on a demonstration that NO<sub>x</sub> emissions can essentially increase without limit without causing ozone standard violations. The State has failed to make such a demonstration. Therefore, EPA believes that a NO<sub>x</sub> control exemption for NSR and general conformity pursuant to section 182(f)(2) (an "excess emissions reduction" argument) is not supported and proposes to disapprove the request relative to these Clean Air Act requirements.

#### III. Proposed Action

The EPA proposes to approve the Illinois and Missouri ozone attainment demonstrations for the St. Louis ozone nonattainment area. In the alternative, the EPA is proposing to disapprove the ozone attainment demonstrations if Illinois or Missouri do not revise the

attainment demonstration modeling and associated weight-of-evidence analyses to incorporate corrections to the 1996 base year emissions inventory and confirm that attainment is demonstrated. These revisions must be submitted in proposed form by June 30, 2000 and in final form by December 31, 2000. In addition, EPA is proposing to disapprove the ozone attainment demonstrations if: (1) the States do not submit proposed regional, statewide NO<sub>x</sub> emission control regulations for electric generating units by June 2000 or do not adopt and submit regional, statewide NO<sub>x</sub> emission control regulations for electric generating units by December 2000; and (2) Missouri does not submit a proposed motor vehicle emissions budget for VOC and NO<sub>x</sub> by June 30, 2000 and final revisions to the motor vehicle emissions budget by December 31, 2000. The Environmental Protection Agency proposes to: (1) approve an exemption from NO<sub>x</sub> emission control requirements for NO<sub>x</sub> RACT for the Illinois portion of the St. Louis ozone nonattainment area; (2) approve an extension of the ozone attainment date for the St. Louis ozone nonattainment area to November 15, 2003; and (3) approve the transportation conformity motor vehicle emissions budget submitted by Illinois for the Illinois portion of the St. Louis ozone nonattainment area. The EPA proposes to disapprove Illinois' requested exemption from NO<sub>x</sub> emission control requirements for New Source Review and general conformity for the Illinois portion of the St. Louis ozone nonattainment area.

#### IV. Administrative Requirements

##### A. Executive Order 12866

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

##### B. Executive Order 13045

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

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

#### C. Executive Order 13084

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

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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

#### E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its

actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: March 30, 2000.

**Gail C. Ginsberg,**

*Acting Regional Administrator, Region 5.*

Dated: April 7, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

[FR Doc. 00-9393 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 217-0231; FRL-6579-2]

**Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesives. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments are due on or before May 17, 2000.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted rule and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule at the following locations:

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

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1199.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

*A. What Rule Did the State Submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD .....	4653 .....	Adhesives .....	03/19/98	09/29/98

On January 26, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of This Rule?*

There are no previous versions of Rule 4653 in the SIP, although the SJVUAPCD adopted earlier versions of this rule on March 17, 1994 and April 13, 1995, and CARB submitted them to us on May 24, 1994 and August 10, 1995, respectively. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

*C. What is the Purpose of the Submitted Rule?*

Rule 4653 limits the VOC emissions resulting from the application of adhesives and adhesive primers. The TSD has more information about this rule.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available

Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4653 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The State of California Air Resources Board's "Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Adhesives and Sealants," December 1998.

*B. Does the Rule Meet the Evaluation Criteria?*

This rule improves the SIP by establishing emission limits for adhesives, by specifying application methods and housekeeping practices, by designating appropriate solvents, and by requiring recordkeeping. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

*C. What Are the Rule Deficiencies?*

These provisions conflict with sections 110 and 182 and part D of the Act and prevent full approval of the SIP revision.

1. Rule 4653 establishes VOC limits which do not meet RACT for specialty contact adhesives which are labeled exclusively for the bonding of single-ply roof material or immersible products, for adhesives used to bond porous materials, and for surface preparation solvents.

2. Under section 4.1.1, certain exempt operations are only required to maintain monthly records documenting the type

and quantity of adhesive products used. These operations, however, may potentially use noncompliant materials which necessitates that daily records be kept.

3. SJVUAPCD included an exemption in section 4.1.9 for contact adhesives subject to 16 CFR part 1302. EPA is unable to approve the inclusion of this exemption without further justification because compliant formulations of these products that perform adequately already exist in the market place.

*D. EPA recommendations to further improve the rules.*

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

*E. Proposed action and public comment.*

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves a subsequent SIP revision that corrects the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

### III. Background Information

#### A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978.	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988.	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991.	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

### IV. Administrative Requirements

#### A. Executive Order 12866

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

#### B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

#### C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### D. Executive Order 13132

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

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

#### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with

statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. National Technology Transfer and Advancement Act*

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

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

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: March 30, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–9392 Filed 4–14–00; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[CA 226–0235; FRL–6578–5]**

### **Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Tehama County Air Pollution Control District**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and a simultaneous limited disapproval of revisions to the California State Implementation Plan (SIP) for the Tehama County Air Pollution Control District (TCAPCD). The revisions concern Rule 4.31—Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, Rule 4.34—Stationary Piston Engines, and Rule 4.37—Determination of Reasonably Available Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines.

The intended effect of proposing limited approval and a simultaneous limited disapproval of the rules is to regulate emissions of NO<sub>x</sub> in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA’s final action on the proposed rules will incorporate the rules into the federally approved SIP. EPA has evaluated the rules and is proposing a limited approval and a simultaneous limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions do not fully meet the CAA provisions regarding unapprovable executive officer discretion.

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

**ADDRESSES:** Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA’s evaluation report of the rules are available for public inspection at EPA’s Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102)

401 “M” Street, S.W., Washington, D.C. 20460

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

Tehama County APCD, P.O. Box 38 (1750 Walnut Street) Red Bluff, CA 96080

**FOR FURTHER INFORMATION CONTACT:** Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

**SUPPLEMENTARY INFORMATION:**

## I. Applicability

The rules being proposed for limited approval and a simultaneous limited disapproval into the California SIP are Tehama County Air Pollution Control District (TCAPCD) Rule 4.31—Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, Rule 4.34—Stationary Piston Engines, and Rule 4.37—Determination of Reasonably Available Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines. Rules 4.31, 4.34 and 4.37 were submitted by the State of California to EPA on May 13, 1999.

## II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement). The November 25, 1992, action should be referred to for further information on the NO<sub>x</sub> requirements for SIPs.

This document addresses EPA's proposed action for Tehama County Air Pollution Control District (TCAPCD) Rule 4.31, adopted by the TCAPCD on March 14, 1995, Rule 4.34 on June 3, 1997, and Rule 4.37 on April 21, 1998. The State of California submitted Rules 4.31, 4.34 and 4.37 to EPA on May 13, 1999. Rules 4.31, 4.37 and 4.34 were found to be complete on May 26, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.<sup>1</sup>

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. TCAPCD Rules 4.31, 4.34, and 4.37 specify NO<sub>x</sub> emission standards and were originally adopted as part of TCAPCD's effort to maintain the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for the rules.

## III. EPA Evaluation and Proposed Action

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found

in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO<sub>x</sub> Supplement (57 FR 55620) and various other EPA policy guidance documents.<sup>2</sup>

For the purpose of assisting State and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble. In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO<sub>x</sub>. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>.

California Air Resources Board (CARB), developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters, July 18, 1991. EPA has used CARB's guidance document in evaluating Rule 4.31. In addition, the CARB has developed a guidance document entitled, "Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines," Dec. 3, 1997. EPA has used CARB's proposed Determination, dated Dec. 3, 1997, in evaluating Rule 4.34. CARB has developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology (BARCT) for Control of Oxides of Nitrogen from Stationary Gas Turbines, dated May 18, 1992. EPA has used CARB's guidance document in evaluating Rule 4.37. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> rules meet Federal requirements and are fully enforceable and strengthen or maintain the SIP.

There are currently no versions of Rules 4.31, 4.34, and 4.37 in the SIP.

Submitted Rules 4.31, 4.34, and 4.37 include the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO<sub>x</sub>).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and recordkeeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, recordkeeping, and compliance testing in addition to guidance regarding emission limits.

EPA has evaluated Tehama County Air Pollution Control District Rules 4.31, 4.34, and 4.37 for consistency with the CAA, EPA regulations, and EPA policy and has found that submitted Rules 4.31, 4.34, and 4.37 supercede TCAPCD Rule 4.14, and contain the following significant modifications from Rule 4.14, which are deficiencies, which must be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA.

### Rule 4.31

- *Section C.4.: Exemptions:* contains unapprovable APCO discretion for units that are exempt from emission requirements due to lack of technical or economic feasibility. Paragraph C. 4. should be deleted.

- *Section F.1.: Compliance schedule:* Allows unapprovable APCO discretion as to schedule of periodic compliance determinations. The words "as specified by the APCO" should be removed and replaced with "once every 2 years, or after 8760 hours of operation, which ever is more frequent."

### Rule 4.34

- *Section G.2:* Allows APCO discretion in approving the use of alternate portable analyzers. (Also, the note on bottom of page IV-6 of the Rule requires an asterisk.)

### Rule 4.37

- *Section D.1.c.:* Allows APCO discretion as to approval of units that are exempt from RACT emission requirements due to lack of technical or economic feasibility. This section "c." should be removed.

A detailed discussion of these deficiencies can be found in the Technical Support Documents for Rules 4.31, 4.34, and 4.37, dated January 25, 2000, which are available from the U.S.

<sup>1</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>2</sup> "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

EPA, Region IX office. Because of these deficiencies, EPA cannot grant approval of the rules under section 110(k)(3) and part D. In order to strengthen the SIP, EPA is proposing a limited approval and a simultaneous limited disapproval of TCAPCD's submitted Rules 4.31, 4.34, and 4.37 under sections 110(k)(3) and 301(a) of the CAA because they contain deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this document have been adopted by the Tehama County Air Pollution Control District and are currently in effect in the Tehama County Air Pollution Control District. EPA's final disapproval action will not prevent the Tehama County Air Pollution Control District or EPA from enforcing the rule.

#### IV. Administrative Requirements

##### A. Executive Order 12866

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

##### B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rules do not create a mandate on State, local or tribal governments. The rules do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 does not apply to the rule.

##### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### D. Executive Order 13084

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

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

##### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The proposed rules will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rules.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

**Dated:** April 3, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
[FR Doc. 00-9395 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 226-0233; FRL-6578-3]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Tehama Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the California State Implementation Plan (SIP) for ozone. The revision concerns the control of oxides of nitrogen (NO<sub>x</sub>) for the Tehama Air Pollution Control District (TCAPCD). The revision concerns TCAPCD Rule 4.14 for the control of oxides of nitrogen (NO<sub>x</sub>) emissions from fuel burning equipment. The intended effect of proposing approval of this rule is to regulate emissions of NO<sub>x</sub> in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA

actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

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

**ADDRESSES:** Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, S.W., Washington, D.C. 20460.

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

Tehama County APCD, P.O. Box 38 (1750 Walnut Street) Red Bluff, CA 96080.

**FOR FURTHER INFORMATION CONTACT:** Ed Addison, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1160.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

The rule being proposed for approval into the California SIP is Tehama Air Pollution Control District Rule 4.14, Fuel Burning Equipment. Rule 4.14 was submitted by the State of California to EPA on May 13, 1999.

##### II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement). The NO<sub>x</sub> Supplement should be referred to for further information on the NO<sub>x</sub> requirements.

This document addresses EPA's proposed action for Tehama Air Pollution Control District Rule 4.14, Fuel Burning Equipment, adopted by the TCAPCD on November 3, 1998. The State of California submitted Rule 4.14

to EPA May 13, 1999. Rule 4.14 was found to be complete on May 26, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.<sup>1</sup>

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. TCAPCD Rule 4.14 specifies exhaust emission standards for NO<sub>x</sub>, and was originally adopted as part of TCAPCD's effort to maintain the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for the rule.

#### III. EPA Evaluation and Proposed Action

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO<sub>x</sub> Supplement (57 FR 55620) and various other EPA policy guidance documents.<sup>2</sup>

The California Air Resources Board (CARB) has developed a guidance document entitled, "California Clean Air Act Guidance, Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters," July 18, 1991. EPA has used CARB's Determination, dated July 18, 1991, in evaluating Rule 4.14 for consistency with the CAA's requirements. In general, EPA uses the guidance documents cited above, as well as other relevant and applicable guidance documents, to ensure that submitted NO<sub>x</sub> rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently a July 12, 1990, EPA approved (55 FR 28624) version of Tehama County Air Pollution Control District Rule 4.14, Fuel Burning Equipment, in the SIP. Submitted Rule 4.14 includes the following provisions:

- General provisions including applicability, exemptions, and definitions.

<sup>1</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>2</sup> "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 Federal Register document" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

- Exhaust emissions standards for oxides of nitrogen (NO<sub>x</sub>).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to guidance regarding emission limits. The submitted version of Rule 4.14 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. The submitted version of Rule 4.14 relaxes the SIP by exempting sources subject to Rules 4.31, 4.34 and 4.37. EPA is separately acting on these rules and believes that they generally adequately control the sources exempted from Rule 4.14. A more detailed discussion of the sources controlled and the controls required can be found in the Technical Support Document (TSD), dated January 25, 2000, which is available from the U.S. EPA, Region IX office.

EPA, in light of Rules 4.31, 4.34 and 4.37, has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, Tehama County Air Pollution Control District Rule 4.14 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO<sub>x</sub> Supplement to the General Preamble.

#### IV. Administrative Requirements

##### A. Executive Order 12866

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

##### B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in

the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

##### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with

Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

##### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base

its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

#### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 3, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
[FR Doc. 00–9394 Filed 4–14–00; 8:45 am]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **45 CFR Part 60**

**RIN 0906–AA41**

#### **National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Medical Malpractice Payments Reporting Requirements**

**AGENCY:** Health Resources and Services Administration, DHHS.

**ACTION:** Proposed rule; status.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is announcing its intention to issue a second Notice of proposed Rulemaking (NPRM) on National Practitioner Data Bank (NPDB) Medical Malpractice payments Reporting Requirements following a period of data gathering and evaluation. This will involve a new 60-day public comment period for the revised proposal.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Croft, 301–443–2300.

**SUPPLEMENTARY INFORMATION:** Proposed rules regarding amending the medical malpractice payment reporting requirements for the NPDB were published on December 24, 1998 (63 FR 71255). More than 120 comments on the proposed rule were received. Given the large number of thoughtful comments and the high level of concern that was voiced about the potential impact of the proposal as published, HRSA believes it is imperative to gather additional data and conduct further analyses before proceeding. A new NPRM then will be published for public comment, with a goal of publishing the revised proposal by the end of 2000. The decision to publish another NPRM with its associated public comment period means that new final regulations likely will be implemented in 2001.

**Authority:** Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by sec. 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

Dated: October 19, 1999.

**Claude Earl Fox,**

*Administrator, Health Resources and Services Administration.*

Approved: December 3, 1999.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–9470 Filed 4–14–00; 8:45 am]

**BILLING CODE 4160–15–M**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 622**

**[I.D. 040600B]**

#### **South Atlantic Fishery Management Council; Public Hearings**

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

**ACTION:** Public hearings; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council), in cooperation with the Caribbean Fishery Management Council, will convene 17 public hearings regarding the draft Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic, Caribbean and Gulf of Mexico (draft FMP). The overall goal of the FMP is to provide a comprehensive management structure for dolphin and wahoo in the Atlantic, Gulf, and Caribbean exclusive economic zone (EEZ). The FMP will take a precautionary approach in conserving these fishery resources, achieving optimum yield (OY), and maintaining current allocations among user groups.

**DATES:** The Council will accept written comments on the draft FMP through July 7, 2000. The public hearings will be held in May and June of 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

**ADDRESSES:** Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Copies of the draft FMP are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366. See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; email address: kim.iverson@noaa.gov.

#### **SUPPLEMENTARY INFORMATION:**

##### **Management Measures**

The draft FMP provides for the following: Establishment of management units for dolphin and wahoo; proposed dealer, vessel and

operator permit requirements; reporting requirements; establishment of a maximum sustainable yield (MSY) and OY; definition of overfishing for dolphin and wahoo; and the establishment of a framework procedure for regulatory adjustments without requiring FMP amendments.

The following proposed management measures are under consideration for dolphin and wahoo in the Atlantic EEZ: (1) Prohibition of the sale of recreationally caught fish in the Atlantic EEZ; (2) a limit on the percent of dolphin harvested in the Atlantic EEZ by the recreational fishery and the commercial fishery, at 87 percent and 13 percent, respectively. (Note: Should either sector's catch exceed these percentages, the Council will review the data and evaluate the need for additional regulations which may be established through the FMP's framework procedures); (3) a recreational bag limit of 5 to 10 dolphins per person per day, excluding the captain and crew of for-hire boats in the Atlantic EEZ; (4) a commercial dolphin trip limit of 1,000 to 5,000 lb or an equivalent number of fish, with no transfer at sea allowed in the Atlantic EEZ; (5) no minimum size limit for dolphin in the Atlantic EEZ; (6) a commercial trip limit for wahoo of 500 lb or an equivalent number of fish, with no transfer at sea allowed in the Atlantic EEZ; (7) no minimum size limit for wahoo in the Atlantic EEZ; (8) a recreational bag limit of two wahoo per person per day for the recreational fishery, excluding the captain and crew of for-hire boats in the Atlantic EEZ; (9) specification of allowable gear for dolphin and wahoo in the Atlantic EEZ as surface longline and as hook-and-line gear including manual, electric, or hydraulic rod and reels, bandit gear, and spearfishing gear; (10) prohibition of the use of pelagic longline gear for dolphin

and wahoo concurrent with time/area closures to the use of such gear for highly migratory pelagic species in the Atlantic EEZ; (11) establish a fishing year of January 1 to December 31 for the dolphin and wahoo fishery; (12) identification of essential fish habitat (EFH) for dolphin and wahoo in the Atlantic; and (13) identification of EFH—Habitat Areas of Particular Concern (HAPC) for dolphin and wahoo in the Atlantic.

#### Time and Location for Public Hearings

Public hearings for the draft FMP will be held at the following dates, times, and locations.

1. May 1, 2000, 7 p.m., Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843-571-1000.
2. May 2, 2000, 7 p.m., Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, FL 32233; telephone: 904-249-7402
3. May 3, 2000, 7 p.m., Holiday Inn, 1300 N. Atlantic Ave., Cocoa Beach, FL 32931; telephone: 407-783-2271.
4. May 4, 2000, 7 p.m., Holiday Inn, 999 N. Atlantic Boulevard, Ft. Lauderdale Beach, FL 32931; telephone: 954-563-5961.
5. May 9, 2000, 7 p.m., Holiday Inn Kill Devil Hills, 1601 Virginia Dare Trail, Kill Devil Hills, NC 27948; telephone: 252-441-6333.
6. May 10, 2000, 7 p.m., Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557; telephone: 252-247-3883.
7. May 11, 2000, 7 p.m., Blockade Runner, 275 Waynick Boulevard, Wrightsville Beach, NC 28480; telephone: 910-256-2251.
8. May 15, 2000, 7 p.m., Hyatt Regency Savannah, 2 West Bay Street, Savannah, GA 31401; telephone: 912-238-1234.
9. May 17, 2000, 7 p.m., Embassy Suites Hotel and Casino, 8000 Tartak

St., Isla Verde, Carolina, Puerto Rico; telephone: 787-791-0505.

10. May 18, 2000, 7 p.m., Holiday Inn St. Thomas, Veterans Drive, St. Thomas USVI; telephone: 800-524-7389.

11. May 19, 2000, 7 p.m., Caravelle Hotel, 448 Queen Cross St., St. Croix, USVI; telephone: 800-595-9505 or 340-773-0687.

12. June 8, 2000, 7 p.m., Hyatt Key West, 601 Front Street, Key West, FL 33040; telephone: 305-296-9900.

13. June 12, 2000, 7 p.m., Cheeca Lodge, Mile Marker 82, US Highway One, Islamorada, FL 33036; telephone: 305-664-4651.

14. June 26, 2000, 7 p.m., Princess Bayside, 4801 Coastal Highway, Ocean City, MD 21842; telephone: 410-723-2900.

15. June 27, 2000, 7 p.m., Holiday Inn, 290 Route 37 East, Toms River, NJ 08753; telephone: 732-244-4000.

16. June 28, 2000, 7 p.m., Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; telephone: 516-585-9500.

17. June 29, 2000, 7 p.m., The Radisson Hotel, 35 Governor Winthrop Boulevard, New London, CT 06320; telephone: 860-443-7000.

Copies of the draft FMP can be obtained from the Council (see **ADDRESSES**).

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by April 26, 2000.

Dated: April 11, 2000.

#### Bruce Morehead,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 00-9564 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-22-F**

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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collection Requirements Submitted to OMB for Review

**SUMMARY:** U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington D.C. 20503. Copies of submission may be obtained by calling (202) 712-1365.

#### SUPPLEMENTARY INFORMATION:

*OMB Number:* OMB 0412-0035.

*Form Number:* AID 1550-2.

*Title:* Private and Voluntary Organization Annual Return.

*Type of Submission:* Renewal.

*Purpose:* USAID is required to collect information regarding the financial support to private and voluntary organizations registered with the Agency. The information is used to determine the eligibility of PVOs to receive USAID funding.

*Annual Reporting Burden:*

*Respondents:* 442.

*Total annual responses:* 442.

*Total annual hours requested:* 1,320 hours.

Dated: April 6, 2000.

**Joanne Paskar,**

*Chief, Information and Records Division,  
Office of Administrative Services, Bureau of  
Management.*

[FR Doc. 00-9422 Filed 4-14-00; 8:45 am]

**BILLING CODE 6116-01-M**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### List of Warehouses and Availability of List of Cancellations and/or Terminations

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice of publication.

**SUMMARY:** Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1999, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1999 is also available. Interested persons may obtain a copy of either list from the person listed below.

**FOR FURTHER INFORMATION CONTACT:** Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250-0553, telephone 202-720-3822, or e-mail requests may be sent: Judy\_Fry@wdc.fsa.usda.gov.

Signed at Washington, D.C., on April 10, 2000.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 00-9450 Filed 4-14-00; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request—School Breakfast Program Pilot Project Evaluation—Pre-Implementation Survey

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval of the pre-implementation survey of the School Breakfast Program Pilot Project Evaluation.

**DATES:** Written comments on this notice must be received by June 16, 2000.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, collection techniques or other forms of information technology. Comments may be sent to: Alberta C. Frost, Director, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection forms should be directed to Alberta C. Frost, (703) 305-2117.

#### SUPPLEMENTARY INFORMATION:

*Title:* The School Breakfast Program Pilot Project Evaluation—Pre-Implementation Survey

*OMB Number:* Not yet assigned.

*Expiration Date:* N/A

*Type of Request:* New collection of information.

*Abstract:* Section 109(b) of the William F. Goodling Child Nutrition Act of 1998 (Pub. L. 105-336) amended section 18(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(e)) to authorize a pilot study that provides free school breakfasts to all students regardless of family income in up to six school districts. An evaluation would rigorously assess the effects of this universal school breakfast program on program participation and a broad range of student outcomes, including academic achievement, school attendance and tardiness, classroom behavior and attentiveness, and dietary status. The evaluation will include a comprehensive implementation analysis that documents how the universal-free

breakfast program was implemented, changes in program operations and administration, and its costs. The evaluation may include a pre-implementation survey of parents to identify students who would be most likely to become new participants under a universal-free breakfast program. Approximately 150 students would be sampled from rosters of enrolled students provided by each of the 144 participating schools. The students' parents/guardians would be surveyed in telephone interviews lasting about 10–15 minutes. The survey would obtain information on children's participation in the regular School Breakfast Program, the likelihood that the student would participate in the universal-free program, and attitudes about breakfast and the School Breakfast Program. The survey would also collect information on the household's socioeconomic characteristics and student characteristics. This request for OMB approval is only for the pre-implementation survey. A separate package will be submitted to OMB for the remainder of the data collection instruments to be used in this evaluation.

*Estimate of Burden:* Public reporting burden is estimated to range between 10 and 15 minutes for each household.

*Respondents:* Parents/guardians of sampled students will be asked to respond to a short telephone survey.

*Estimated Number of Respondents:* 150 households from each of 144 elementary schools totaling 21,600 households.

*Estimated Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 5,400 hours.

Dated: April 11, 2000.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 00–9554 Filed 4–14–00; 8:45 am]

**BILLING CODE 3410–30–U**

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## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Minnesota 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 Minnesota Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 4 p.m. on Tuesday, May 9, 2000, at the Embassy Suites, 425 South Seventh Street, Minneapolis, Minnesota 55415. The purpose of the

meeting is to review the Committee's report, "Civil Rights Issues Facing Minorities in Moorhead, Minnesota," and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Alan W. Weinblatt, 612–292–8770, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). 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 7, 2000.

**Lisa M. Kelly,**

*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*

[FR Doc. 00–9400 Filed 4–14–00; 8:45 am]

**BILLING CODE 6335–01–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–836]

#### Glycine From the People's Republic of China: Extension of Time Limit for Preliminary Results of the New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce ("the Department") is extending the time limit for the preliminary results of a new shipper review of glycine from the People's Republic of China ("China"). This review covers one Chinese producer, Nantong Dongchang Chemical Industry Corp. ("Nantong"), for the period March 1, 1999 through August 31, 1999.

**EFFECTIVE DATE:** April 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak at (202) 482–5811; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA").

### Postponement of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results of the administrative review within the original time limit of April 29, 2000. See *Decision Memorandum from Edward C. Yang, Office Director to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III*, April 7, 2000. The Department is extending the time limit for completion of the preliminary results until June 28, 2000 in accordance with Section 751(a)(2)(B)(iv) of the Act.

The deadline for the final results of this review will continue to be 90 days after the signature date of the preliminary results.

Dated: April 7, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Enforcement Group III.*

[FR Doc. 00–9560 Filed 4–14–00; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–844–802]

#### Agreement Suspending the Antidumping Investigation on Uranium From Uzbekistan

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of Price Determination on Uranium from Uzbekistan.

**SUMMARY:** Pursuant to Sections IV.A(2) and IV.C.1 of the agreement suspending the antidumping investigation on uranium from Uzbekistan, as amended, (antidumping suspension agreement on uranium from Uzbekistan), the Department of Commerce (the Department) calculated a price for uranium of \$10.05/pound of U<sub>3</sub>O<sub>8</sub> for the relevant period, as appropriate. This price will be used, as appropriate, to implement to Sections IV.A(2) and IV.C.1 of the Uzbekistan agreement.

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

**FOR FURTHER INFORMATION CONTACT:** James Doyle or Marlene Hewitt, Office of Antidumping/Countervailing Duty

Enforcement—Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482-0159 or (202) 482-6412 respectively.

### Price Calculation

#### Background

Sections IV.A(2) and IV.C.1 of the antidumping suspension agreement on uranium from Uzbekistan prescribe that the Department issue its determined market price on April 1, 2000, and use it to determine the quota applicable to the above referenced provisions of Uzbekistan's agreement during the period of October 1, 1999, to March 31, 2000. Consistent with the February 22, 1993 letter of interpretation, the Department provided interested parties with the applicable preliminary price determination on March 27, 2000. No interested party submitted comments.

#### Calculation Summary

Sections IV.A(2) and IV.C.1 of the agreement specify how the components of the market price are to be determined. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized a simple average of the UPIS U.S. Base Price for the months in the period as no useable contract information was submitted.

The Department's letters to market participants provided a contract summary sheet and directions requesting the submitter to report its best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U<sub>3</sub>O<sub>8</sub> equivalent). As all reported information had already been reported to UPIS or was for spot contracts or was for out-of-period contracts or used inherently speculative market-pricing, none were useable for the Department's calculation.

#### Weighting

The Department used the average spot and long-term volumes of U.S. utility and domestic supplier purchases, as reported by the Energy Information Administration (EIA) to weight the spot and long-term components of the observed price. We have used the purchase data from the period 1995-1998. During this period, the spot

market accounted for 76.61 percent of total purchases, and the long-term market for 23.39 percent.

As in previous determinations, the Department used the EIA's *Uranium Industry Annual* to determine the available average spot and long-term volumes of U.S. utility purchases. We have updated the data to reflect the period 1995 through 1998. The EIA has withheld certain business proprietary contract data from the public versions of the *Uranium Industry Annual 1995*, *Uranium Industry Annual 1996*, *Uranium Industry Annual 1997* and the *Uranium Industry Annual 1998*. The EIA, however, provided all business proprietary data to the Department and the Department has used it to update its weighting calculation.

#### Calculation Announcement

The Department determined, using the methodology and information described above, that the observed market price is \$10.05. This reflects an average spot market price of \$9.70, weighted at 76.61 percent, and an average long-term contract price of \$11.23, weighted at 23.39 percent. This price will be used, as appropriate, to determine quota availability for purposes of Sections IV.A(2) and IV.A. of the antidumping suspension agreement on uranium from Uzbekistan.

Dated: April 10, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary AD/CVD Enforcement Group III.*

[FR Doc. 00-9559 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 00218045-0095-02]

RIN 0648-ZA80

#### Sea Grant Minority Serving Institutions Partnership Program: Request for Proposals for FY 2000; Correction

**AGENCY:** National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice; correction.

**SUMMARY:** The National Oceanic and Atmospheric Administration published a document in the **Federal Register** on March 14, 2000 announcing that applications were being accepted for the Sea Grant Minority Serving Institution Partnership Program, initiated by the National Sea Grant College Program.

The document is being amended to make Minority Serving Institutions in the state of Alaska eligible to submit proposals.

**FOR FURTHER INFORMATION CONTACT:** Dr. Francis Schuler, Executive Director, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713-2445 ext. 158; e-mail: [fritz.schuler@noaa.gov](mailto:fritz.schuler@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In the March 14, 2000, **Federal Register** notice soliciting proposals for the Sea Grant Minority Serving Institutions Partnership Program, a drafting error in the eligibility section of notice occurred. NOAA is now amending this notice to reflect that Minority Serving Institutions in the state of Alaska are eligible to submit proposals to the Partnership Program.

#### Correction

In the **Federal Register** of March 14, 2000, in FR Doc. 00-6230, on page 13720, in the second column, correct Section III, paragraph (iv) to read as follows:

(iv) institutions of higher education located in U.S. insular areas and the state of Alaska that are on the "1999 United States Department of Education Accredited Post-Secondary Minority Institutions" are eligible to submit proposals.

**Program Authority:** 33 U.S.C. 1121-1131. Catalog of Federal Assistance Number: 11.417, Sea Grant Support.

Dated: April 10, 2000.

**Louisa Koch,**

*Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 00-9283 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-KA-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 040600E]

#### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Dolphin and Wahoo Advisory Panel (AP) and

Scientific and Statistical Committees (SSC).

**DATES:** The AP meeting is scheduled to begin at 8:30 a.m. on May 1, 2000 and will conclude by 3 p.m. The SSC meeting is scheduled to begin at 8:30 a.m. on May 3, 2000 and will conclude by 5 p.m.

**ADDRESSES:** Both meetings will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813-877-6688.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The Dolphin and Wahoo AP and SSCs will convene to review an "Exploratory Assessment of Dolphinfinch, *Coryphaena hippurus*, based on U.S. Landings from the Atlantic Ocean and Gulf of Mexico" that was prepared by NMFS. The Dolphin and Wahoo AP will also review reports by the Mackerel Stock Assessment Panel (MSAP) and Socioeconomic Panel (SEP) regarding this assessment.

The Dolphin and Wahoo AP previously reviewed a draft of the Dolphin and Wahoo Fishery Management Plan (FMP) that was prepared by the South Atlantic, Gulf, and Caribbean Fishery Management Councils. Based on the review of these additional documents regarding dolphin, the Dolphin and Wahoo AP may make additional recommendations to the Council regarding the management of dolphin.

The SSC will review the same information and formulate their recommendations based on a scientific perspective.

Although other non-emergency issues not on the agendas may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813-228-2815.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 24, 2000.

Dated: April 7, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 00-9561 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-22-F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 040600D]

#### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings of the Mackerel Advisory Panel (AP) and Scientific and Statistical Committees (SSC).

**DATES:** The AP meeting is scheduled to begin at 8:30 a.m. on May 2, 2000 and will conclude by 3 p.m. The SSC meeting is scheduled to begin at 8:30 a.m. on May 3, 2000 and will conclude by 5 p.m.

**ADDRESSES:** Both meetings will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813-877-6688.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The Mackerel AP and SSC will convene to review assessment information on mackerel stocks and provide recommendations to the Council on possible changes to Federal rules affecting mackerels.

The Mackerel AP and SSC will review the 2000 stock assessment analyses for Gulf group king mackerel, the Mackerel Stock Assessment Panel (MSAP) report, and the report of the Socioeconomic Panel (SEP) that includes economic and social information related to the range of

acceptable biological catch (ABC) and other management considerations for Gulf group king mackerel. Based on this review, the Mackerel AP and SSC may recommend to the Council levels for total allowable catch (TAC), bag limits, size limits, commercial quotas, and other measures for these species for the 2000-2001 fishing season. The Mackerel AP and SSC will also review a reporting form that NMFS Southeast Fisheries Science Center will be using to collect information on finfish discarded from the commercial catch, and may provide comments to the Council on the form.

At the conclusion of the Mackerel SSC meeting, the Standing SSC members will review the NMFS' bycatch reduction device (BRD) testing protocol and may provide comments to the Council. Also, the Standing SSC will discuss NMFS' response to the SSC's previous question regarding historical red grouper landings.

Although other non-emergency issues not on the agendas may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813-228-2815.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 24, 2000.

Dated: April 7, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 00-9562 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-22-F**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 040600C]

**New England Fishery Management Council; Public Meetings**

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee and Groundfish Industry Advisory Panel in May, 2000. Recommendations from the committee and the advisors will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held May 1 and 2, 2000, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The Committee and Advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan. If not completed at meetings held in April, the Committee and Advisors will continue their review of current overfishing definitions and control rules for the multispecies complex, examine the assumptions and policy decisions in those rules, and develop recommendations for the biological goals of the Amendment. The Committee and Advisors will also organize into subcommittees that will be tasked to develop specific management options for consideration by the full Committee. These tasks will be based on broad approaches to management selected by the Committee. The subcommittees may meet individually during the meeting to begin work on these management options. The discussions at the subcommittee level will be reported back to the Committee at this meeting or at future meetings.

Although non-emergency issues not contained in this agenda may come before this 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 notice

and any issues arising after publication of this notice that require 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 7, 2000.

**Richard W. Surdi,**

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

[FR Doc. 00-9565 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-22-F**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 040700F]

**South Atlantic Fishery Management Council; Public Scoping Meetings**

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold nine public scoping meetings regarding the concept of using marine reserves as a fishery management tool.

**DATES:** The meetings will be held in April, May, and June. See

**SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

**ADDRESSES:** Copies of the Public Information Document (PID) for Marine Reserves are available by contacting Kerry O'Malley, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; email: kerry.omalley@noaa.gov. The PID will also be available at the meeting. See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: 843-571-4366; fax: 843-769-4520; email: kim.iverson@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Purpose of Meetings**

The Council will hold scoping meetings to gather public comments

regarding the concept of using marine reserves (nearshore or offshore, natural or man-made) as a fishery management tool, emphasizing the conservation of essential fish habitat and the species associated with the snapper-grouper complex. The Council has not yet decided whether to proceed with the development of marine reserves.

**Time and Location for Public Meetings**

Public scoping meetings will be held at the following dates, times, and locations.

1. April 26, 2000, 6:30 p.m., Marine Resources Center, SC Dept. of Natural Resources, 217 Ft. Johnson Road, Charleston, SC 29422; telephone: 843-762-5010.

2. May 9, 2000, 6 p.m., Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, FL 32233; telephone: 904-249-7402.

3. May 10, 2000, 6 p.m., Holiday Inn, 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; telephone: 407-783-2271.

4. May 11, 2000, 6 p.m., Ireland's Inn, 2220 N. Atlantic Blvd. Ft. Lauderdale, FL 33305; telephone: 954-565-6661.

5. May 16, 2000, 6 p.m., Classroom 205, McGee Building, Carteret Community College, 3505 Arendell Street, Morehead City, NC 28557; telephone: 252-247-3097.

6. May 17, 2000, 6 p.m., NCDMR Field Office, 127 Cardinal Drive Extension, Wilmington, NC 28405-3845; telephone: 910-395-3990.

7. May 25, 2000, 6 p.m., Murrell's Inlet Community Center, 4450 Murrell's Inlet Road, Murrell's Inlet, SC 29576; telephone: 843-651-7373.

8. May 31, 2000, 6 p.m., University of Georgia Marine Extension Service, 715 Bay Street, Brunswick, GA 31520; telephone: 912-264-7268.

9. June 1, 2000, 6 p.m., Hyatt Regency, 2 West Bay Street, Savannah, GA 31401; telephone: 912-238-1234.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by April 20, 2000.

Dated: April 11, 2000.

**Bruce Morehaed,**

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

[FR Doc. 00-9563 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-22-F**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 041200C]

**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 103rd meeting of the Western Pacific Fishery Management Council (Council) will convene May 1, 2000, at 1 p.m.

**ADDRESSES:** The meeting will be held at the Western Pacific Fishery Management Council office, 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 are addressed may change.

1. Introductions;
2. Approval of Agenda;
3. Approval of 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 Fishery Management Plan (FMP);
5. Banning of spear fishing with SCUBA apparatus during day and night in the Western Pacific Region, as a preferred alternative under the Coral Reef Ecosystem FMP;
6. The Council may also wish to discuss issues relating to fisheries under Council jurisdiction in the Northwestern Hawaiian Islands;
7. Approval of Elliot Lutali's membership of Pelagic Plan Team;
8. Public comment;
9. Council action; and
10. Other business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has

been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, Executive Director, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to meeting date.

Dated: April 12, 2000.

**Bruce C. Morehead,**

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

[FR Doc. 00-9566 Filed 4-14-00; 8:45 am]

**BILLING CODE 3510-22-F**

**DEPARTMENT OF DEFENSE****Office of the Secretary; Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children With Disabilities**

**AGENCY:** Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS), DOE.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Public Law 92-463, as amended (5 U.S. app. II), the Federal Advisory Committee Act, notice is hereby given that a meeting of the Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities is scheduled to be held from 8 a.m. to 3 p.m. on May 9-10, 2000. The meeting is open to the public and will be held at the Fort Benning Dependent Schools, Building 2670, 210 Custer Road, Fort Benning, Georgia 31905. The purpose of the meeting is to: (1) Review the response to the panel's recommendations from its December 1999 meeting; (2) review and comment on data and information provided by the Department of Defense Domestic Dependent Elementary and Secondary Schools; and (3) establish subcommittees as necessary. Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Mr. David V. Burket at (703) 696-4354, extension 1455.

Dated: April 11, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 00-9416 Filed 4-14-00; 8:45 am]

**BILLING CODE 5001-10-M**

**DEPARTMENT OF DEFENSE****Office of the Secretary of Defense****Meeting of the DOD Advisory Group on Electron Devices**

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Thursday, May 18, 2000.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 00-9412 Filed 4-14-00; 8:45 am]

**BILLING CODE 5001-10-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense; Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Friday, April 28, 2000.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:**

David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. § 10(d) (1994)), it has been determined that his Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that

accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 00-9413 Filed 4-14-00; 8:45 am]

**BILLING CODE 5001-10-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense; Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Wednesday, May 24, 2000.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr.

Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. § 10(d) (1994)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

**L.M. Bynum,**

*Alternate, OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 00-9414 Filed 4-14-00; 8:45 am]

**BILLING CODE 5001-10-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense; Change in Meeting Date of the DOD Advisory Group on Electron Devices

**AGENCY:** Advisory Group on Electron Devices, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

**DATES:** The meeting will be held at 0900, Tuesday, April 25, 2000. This meeting replaces the meeting that was to be held on Thursday, March 16, 2000.

**ADDRESSES:** The meeting will be held Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:**

Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 00-9415 Filed 4-14-00; 8:45 am]

**BILLING CODE 5001-10-M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### **Notice of Extension to the Public Comment Period From April 3, 2000 to April 24, 2000 for the Environmental Impact Statement for the Disposal and Reuse of MCAS El Toro**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to a request from the El Toro Reuse Planning Authority (ETRPA), the Deputy Assistant Secretary of the Navy (Installations and Environment), has decided to extend the public review comment period for the former Marine Corps Air Station (MCAS) El Toro Disposal and Reuse Environmental Impact Statement (EIS), from April 3, 2000 to April 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Montana, NEPA Project Manager, Commander, Southwest Division, BRAC Program Office, 1230 Columbia Street, Suite 1100, San Diego, CA 92101-8517, phone (619) 532-0942.

Dated: April 12, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate  
General's Corps U.S. Navy, Federal Register  
Liaison Officer.*

[FR Doc. 00-9528 Filed 4-14-00; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### **Notice of Intent To Prepare an Analysis of Environmental Impacts Associated With the Conveyance of the Naval Ammunition Support Detachment, Vieques, Puerto Rico**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

Notice of intent to prepare analysis of the environmental impacts associated with the conveyance of the Navy property as contemplated by the President's Directive to the Secretary of Defense and the Director, Office of Management and Budget, dated January 31, 2000, entitled "Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico;" and notice of scoping period.

**SUMMARY:** The Department of the Navy (Navy) will prepare an analysis of the environmental impacts associated with implementation of the President's Directive of January 31, 2000. The analysis will address conveyance of the property comprising the Naval Ammunition Support Detachment (NASD), Vieques, Puerto Rico, except approximately 100 acres of land on which the Relocatable Over-The-Horizon Radar (ROTHR) facility and Mount Pirata telecommunications site are located. It is anticipated that Navy will also retain such easements and other property interests as are necessary to support access to and continued operation of these two sites.

The environmental analysis will address endangered and threatened species, other natural resources, cultural resources, hazardous materials, and other issues brought forth through the scoping process. The environmental analysis will also address potential mitigation measures. The Department of the Interior will act as a cooperating agency in the preparation of the environmental analysis.

On February 25, 2000, Navy submitted legislation to the Congress proposing conveyance of the NASD property to the Commonwealth of Puerto Rico.

Federal, state, and local agencies, and individuals or organizations who may be interested in or affected by the conveyance of the property or the management of the conservation areas are invited to provide oral or written comments, in Spanish or English, accepted until May 17, 2000. Comments should be as specific as possible. Scoping comments may be sent to: Commander, U.S. Naval Forces South, Building 1685, U.S. Naval Station Roosevelt Roads, Puerto Rico 00742, FPO 8A34099-6004.

**FOR FURTHER INFORMATION CONTACT:** For additional information, write to the above address or call Mr. Jose Negron at (757) 865-4078.

**SUPPLEMENTARY INFORMATION:** The President directed the Navy to submit legislation authorizing the conveyance of the property comprising the NASD, Vieques, except approximately 100 acres of land on which the ROTHR facility and Mount Pirata Telecommunications site are located, to the Commonwealth of Puerto Rico.

Dated: April 12, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate  
General's Corps, U.S. Navy, Federal Register  
Liaison Officer.*

[FR Doc. 00-9553 Filed 4-14-00; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF ENERGY

#### **Office of Science; Office of Science Financial Assistance Program Notice 00-14; Experimental Program To Stimulate Competitive Research (EPSCoR); Building EPSCoR-State/ National Laboratory Partnerships**

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice inviting research grant applications.

**SUMMARY:** The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of basic science, engineering, and mathematics, announces its interest in receiving grant applications for collaborative partnerships between academic or industrial researchers from states eligible for the DOE/EPSCoR program and researchers at DOE's National Laboratories, facilities, and centers. The purpose of the DOE/EPSCoR program is to enhance the capability of designated states to conduct nationally-competitive energy-related research, and to develop science and engineering manpower in energy-related areas to meet current and future needs. The purpose of this program notice is to initiate and promote partnering and collaborative relationships that build beneficial energy-related research programs with strong participation by students, postdoctoral fellows and young faculty from EPSCoR states.

**DATES:** Potential applicants are required to submit a brief preapplication. All preapplications, referencing Program Notice 00-14, should be received by DOE by 4:30 P.M., E.D.T., October 3, 2000. A response to the preapplications encouraging or discouraging a formal application will be communicated to the applicant within approximately thirty days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., January 16, 2001, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

**ADDRESSES:** All preapplications, referencing Program Notice 00-14, should be sent to Dr. Matesh N. Varma, Division of Materials Sciences and Engineering, SC-132, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290.

After receiving notification from DOE encouraging submission of a formal application, applicants may prepare formal applications and send them to:

U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC-64, 19901 Germantown Road, Germantown, MD 20874-1290, ATTN: Program Notice 00-14. This above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Division of Materials Sciences and Engineering, SC-132, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, Telephone: (301) 903-3209, Facsimile: (301) 903-9513 or Internet E-mail address:

matesh.varma@science.doe.gov.

**SUPPLEMENTARY INFORMATION:** To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR), DOE encourages the formation of partnerships between academic and industrial researchers in EPSCoR states and the researchers at DOE's National Laboratories, facilities and centers in scientific areas supported by DOE's Office of Science. These collaborations should address areas of research of current interest to the Department. Undergraduate and graduate students, postdoctoral fellows and young faculty *must* be active members of the research team, and it is required that these investigators spend a summer or significant time during the academic-year at a National Laboratory, facility or center. Subcontracting arrangements with DOE National Laboratories will not be permitted. DOE eligible states and territories for the EPSCoR program are: Alaska, Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

### Program Funding

It is anticipated that approximately \$3,000,000 will be available in FY 2001 for research that encourages and facilitates collaborative efforts between researchers from EPSCoR states and researchers at DOE's National Laboratories, facilities, and centers. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, the availability of funds, and evidence of substantial interactions between the EPSCoR researchers and

the National Laboratory partner. Awards are expected to range up to a maximum of \$150,000 annually with terms from one to three years. The number of awards and range of funding will depend on the number of applications received and selected for award. Cost sharing is strongly encouraged. All DOE/EPSCoR award funds will be provided to the recipient organization within the EPSCoR state for the purpose of supporting activities in the EPSCoR state and may include travel and lodging, faculty or student stipends, materials, services and equipment.

### Applications

To minimize undue effort on the part of applicants and reviewers, interested parties are invited to submit preapplications. The preapplications will be reviewed relative to the scope and research needs of the Department of Energy. The brief preapplication must consist of (1) one to two pages of narrative describing the research objectives and methods of accomplishment, (2) a letter from the appropriate state EPSCoR coordinator endorsing the preapplication, and (3) a letter of intent from the DOE National Laboratory confirming collaboration on the project. The preapplications will be grouped according to programmatic areas of interest to the Office of Science and will be reviewed by DOE laboratory scientists to determine the priority of the proposed research. The preapplication will also be reviewed by the relevant programmatic research area program manager, to determine the priority of research and possible cofunding by that program office. Based on this review, DOE/EPSCoR management will recommend formal submission of applications to the Department. A telephone number, facsimile number, and e-mail address are required parts of the preapplication. Instructions regarding the contents of a preapplication and other preapplication guidelines can be found on the SC Grants and Contracts web site at: <http://www.sc.doe.gov/production/grants/preapp.html>.

In addition to the project description, all preapplications and formal applications must include the following information:

(1) Applications should explain the relevance of the proposed research to the agency's programmatic needs. On the cover page, applicants should specify the relevant DOE technical program office, and if known, the name of the program manager, and telephone number. DOE program descriptions and the contact person information may be

accessed via the web at: <http://www.doe.gov>.

(2) Applications must demonstrate clear evidence of collaborative intent, including a delineation of each partner's role and contribution to the research effort as well as a "Letter-of-Intent" from the participating DOE National Laboratory, facility, or center.

(3) Applications should explain the individual value to both the EPSCoR and the National Laboratory partners. There should be clear objectives, not necessarily the same, for each partner.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, listed in descending order of importance as codified at 10 CFR part 605.10(d).

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs and priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications received by SC under its current competitive application mechanisms that meet the criteria outlined in this Notice may also be deemed appropriate for consideration under this announcement and may be funded under this program.

General information about the development and submission of preapplications, applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Financial Assistance Guide is possible via the Internet at the following web site address: <http://www.sc.doe.gov/production/grants/grants.html>.

Additional information regarding format, preparation and specific requirements may be found at web site address: <http://www.sc.doe.gov/production/bes/EPSCoR/APPLI1.HTM>.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington DC on April 4, 2000.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 00-9482 Filed 4-14-00; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Nuclear Energy Research Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

**DATES:** Tuesday, May 23, 2000, 10:30 am to 5:30 pm and Wednesday, May 24, 2000, 8 am to 12:30 pm.

**ADDRESS:** Hyatt Arlington at Washington Key Bridge, 1325 Wilson Boulevard, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE-1, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone Number 202.586.0136, E-mail: Norton.Haberman@hq.doe.gov.

#### SUPPLEMENTARY INFORMATION:

*Purpose of the Meeting:* To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

#### *Tentative Agenda*

Tuesday, May 23, 2000

Welcome remarks

Status of Nuclear Energy's FY 2000

Budget

Report on Long-term Isotope Research and Production Plan

Long-term Planning for nuclear Energy

Research Subcommittee Report

Nuclear Science and Technology

Infrastructure Roadmap

Subcommittee report

Wednesday, May 24, 2000

Report of other NERAC Subcommittees and panels

Public comment period.

*Public Participation:* The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on April 12, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-9483 Filed 4-14-00; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER97-2261-014]

#### Constellation Power Source, Inc.; Notice of Filing

April 11, 2000.

Take notice that on March 31, 2000, Constellation Power Source, Inc. submitted for filing an updated market analysis as required by the Commission's condition granting it authorization to sell wholesale power 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 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).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9481 Filed 4-14-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-168-000]

#### Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

April 11, 2000.

Take notice that on April 3, 2000, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP00-168-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities for service to Tyson Foods, Inc. (Tyson), an industrial end-user, in Hinds County, Mississippi, under Koch's blanket certificate issued in Docket No. CP82-430-000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www/ferc/fed.us/online/htm> (call 202-208-222 for assistance).

Koch requests authorization to construct and operate delivery point facilities to serve Tyson's industrial plant. It is stated that Koch will use the facilities to transport up to 850 dekatherms per day on a firm basis pursuant to the terms of Koch's FTS rate schedule for delivery to Tyson. Koch estimates the cost of the facilities at under \$50,000. It is asserted that Koch has sufficient capacity to render the proposed service without disadvantage to its other existing customers and that Koch's tariff does not prohibit the addition of delivery point facilities. It is stated that the proposed service will not have an impact on Koch's annual deliveries or peak day operations even though the proposed service is firm in nature. It is explained that Tyson is currently being served by Reliant

Energy-Entex, a local distribution company.

Any questions regarding the application may be directed to Kyle Stephens, Director of Certificates, at Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas 77251-1478.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9475 Filed 4-14-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL00-66-000]

#### Louisiana Public Service Commission and the Council of The City of New Orleans, Louisiana v. Entergy Corporation, Entergy Service, Inc., Entergy Louisiana, Inc., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Gulf States, Inc., Notice of Complaint

April 11, 2000.

Take Notice that on April 10, 2000, the Louisiana Public Service Commission and the Council of the City of New Orleans filed with the Federal Energy Regulatory Commission (Commission) a Complaint against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, Inc., Entergy Gulf States, Inc., Entergy Arkansas, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc. seeking amendments to the Entergy System Agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene nor 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 May 1, 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 May 1, 2000.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9472 Filed 4-14-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL99-92-001]

#### MidAmerican Energy Company; Notice of Filing

April 11, 2000.

Take notice that on March 31, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, 2900 Ruan Center, Des Moines, Iowa 50309, tendered for filing amendments to Network Integration Transmission Service Agreements with the Municipal Electric Utility of Waverly, Iowa (Waverly); the City of Denver, Iowa (Denver); the City of Sergeant Bluff, Iowa (Sergeant Bluff); the City of Geneseo, Illinois (Geneseo); and MidAmerican, as wholesale merchant; and amendments to Firm Transmission Service Agreements with the City of Eldridge, Iowa (Eldridge); the Ames Municipal Electric System (Ames); Northwest Iowa Power Cooperative (NIPCO); and Alliant Energy Corporation (Alliant).

MidAmerican states that the amendments have been filed pursuant to Section II.B.1 of the Offer of Settlement approved by the Commission in Docket No. EL99-92-000 on March 17, 2000.

MidAmerican requests an effective date of January 1, 2000 for each of the amendments and a waiver of the Commission's notice requirement.

Copies of the filing were served on Waverly, Denver, Sergeant Bluff, Geneseo, Eldridge, Ames, NIPCO,

Alliant, the Iowa Utilities Board, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and all parties to Docket No. EL99-92-000.

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).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9480 Filed 4-14-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL00-67-000]

#### Strategic Power Management, Inc., Complainant, v. New York Independent System Operator, Respondent; Notice of Filing

April 11, 2000.

Take notice that on April 10, 2000, Strategic Power Management, Inc. (SPM) filed against the New York Independent System Operator, a Complaint Requesting Fast Track Processing and Motion to Consolidate.

A copy of this filing was serviced upon all persons parties reasonably believed to have an interest herein or be affected thereby in accordance with 18 CFR 385.206(c).

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 21, 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 21, 2000.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9473 Filed 4-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-165-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Application

April 11, 2000.

Take notice that on April 3, 2000, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP00-165-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Transco's Sundance Expansion Project (Sundance), located in Alabama, Georgia, Mississippi, and North Carolina, an incremental expansion of Transco's existing pipeline system which will provide 236,383 dekatherms per day (dts/d) of new firm transportation capacity to serve increased market demand in the Southeastern region of the United States by a proposed in-service date of May 1, 2002, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Transco states that an order to create the firm transportation capacity for the Sundance project, it proposes to construct and operate the following facilities on its mainline pipeline system:

1. 12.03 miles of 42-inch diameter pipeline loop from milepost (MP) 772.81 on Transco's mainline in Clarke County, Mississippi to MP 784.84 in Choctaw County, Alabama (the DeSoto loop).

2. 9.36 miles of 48-inch diameter pipeline loop from MP 851.46 on Transco's mainline in Dallas, County, Alabama to MP 860.82 in Perry County, Alabama (the Summerfield loop).

3. Piping modifications at Transco's existing Compressor Station No. 105, which is located in Coosa County, Alabama.

4. 8.97 miles of 42-inch diameter pipeline loop from MP 1247.03 on Transco's mainline in Cleveland County, North Carolina to MP 1256.00 in Gaston County, North Carolina (the Kings Mountain loop).

5. 7.67 miles of 42-inch diameter pipeline loop from MP 1287.11 on Transco's mainline to MP 1294.78 in Iredell County, North Carolina (the Mooresville loop).

6. The installation of one new 18,975 horsepower compressor unit, and the uprating of an existing 15,000 horsepower compressor unit, and an existing 16,500 horsepower compressor unit to 18,975 horsepower each at Transco's existing Compressor Station No. 115, which is located in Coweta County, Georgia. The proposed Sundance project will increase the total certificated compression at this station to 56,425 horsepower.

7. The installation of one new 15,000 horsepower compressor unit, and the uprating of an existing 4,000 horsepower compressor unit to 4,800 horsepower at Transco's existing Compressor Station No. 125, which is located in Walton County, Georgia. The proposed Sundance project will increase the total certificated compression at this station to 38,800 horsepower.

8. The installation of gas coolers at Transco's existing Compressor Station No. 150, which is located in Iredell County, North Carolina.

Transco declares that the total estimated cost for the proposed facilities will be \$134.67 million.

Transco states that the construction and operation of the proposed facilities will not have a significant impact on human health or the environment. Transco asserts that the proposed facilities, for the most part, will be installed either within or immediately adjacent to existing pipeline or utility rights-of-way and Transco's existing compressor station yards. Transco certifies that the proposed facilities will be designed, constructed, operated, and maintained in accordance with all applicable safety standards and plans for maintenance and inspection.

Any questions regarding the application should be directed to Toi Anderson, at (713) 215-4540 and (1-888) 214-8475, Transcontinental Gas

Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.

Transco states that it held an open season from April 16 through June 1, 1999, during which it received written expressions of interest from potential shippers desiring new firm transportation service to be made available as a result of the Sundance project. As a result of the open season, Transco declares that it executed precedent agreements with the following twelve shippers: Carolina Power & Light Company (75,000 dts/d); City of Buford, Georgia (2,588 dts/d); Clinton-Newberry Natural Gas Authority, South Carolina (2,000 dts/d); City of Commerce, Georgia (207 dts/d); City of Covington, Georgia (776 dts/d); City of Fort Hill, South Carolina (8,000 dts/d); City of Fountain Inn, South Carolina (3,500 dts/d); City of Greer, South Carolina (2,500 dts/d); City of Sugar Hill, Georgia (518 dts/d); City of Toccoa, Georgia (1,035 dts/d); City of Winder, Georgia (259 dts/d); and Southern Company Services, Inc. (140,000 dts/d). Transco states that 100% of the firm capacity to be created by the Sundance project is subscribed to by these twelve shippers.

Transco declares that the firm transportation service under the Sundance project will be provided under Rate Schedule FT of Transco's FERC Gas Tariff, Volume No. 1, and Transco's blanket certificate under Part 284(G) of the Commission's regulations. Transco states that the proposed cost-based recourse rate for the Sundance project is based on a straight fixed-variable rate design methodology and an increment cost of service.

Transco requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by September 1, 2000, and a final order granting the authorizations by April 1, 2001.

Any person desiring to be heard or to make any protest with reference to said Application should on or before May 2, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9474 Filed 4-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL00-62-000, et al.]

#### ISO New England Inc., et al.; Electric Rate and Corporate Regulation Filings

April 10, 2000.

Take notice that the following filings have been made with the Commission:

**1. ISO New England Inc., New England Power Pool, Central Maine Power Company, Northeast Utilities Service Company, The United Illuminating Company, Unitil Power Corp. and Fitchburg, Gas and Electric Light Company, Vermont Electric Power Company, Inc., v. New England Power Pool and ISO New England Inc.**

[Docket Nos. EL00-62-000, ER00-2052-000, ER00-2016-000, EL00-59-000, and ER00-2005-000]

Take notice that on March 31, 2000, as corrected on April 3, 2000, ISO New England Inc. filed in Docket Nos. EL00-62-000 and ER00-2052-000, pursuant to Section 206 proposed amendments to the New England Power Pool (NEPOOL) Open Access Transmission Tariff and the Restated NEPOOL Agreement to facilitate implementation of a Congestion Management System and Multi-Settlement System, and associated arrangements, for New

England. Copies of said filing have been served upon the Secretary of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

Take notice that on March 30, 2000, in PG&E Generating, USGen New England, Inc., PG&E Energy Trading Power L.P., FPL Energy, LLC, Sithe New England Holdings, North American, LLC, Dighton Power Associates L.P., Tiverton Power Associates L.P., Rumford Associates L.P., Great Bay Power Corporation, NRG Power Marketing, Inc., Somerset Power, LLC, Middletown Power, LLC, Norwalk Harbor Power, LLC, Devon Power, LLC, Montville Power, LLC, Connecticut Jet Power, LLC, and Indeck-Pepperell Power Associates, Inc. (the Supporting Generators) submitted for filing in Docket No. ER00-2016-000, pursuant to Section 206 of the Federal Power Act, a proposal for a comprehensive congestion management system (CMS) and multi-settlement system (MSS). The Supporting Generators state that copies of the filing have been served upon all entities listed in Docket No. ER00-2016-000, the participants in the New England Power Pool, non-Participant transmission customers, and the New England State Governors and Regulatory Commissions.

Take notice that on March 31, 2000 Central Maine Power Company; Northeast Utilities Service Company; The United Illuminating Company; Unitil Power Corp. and Fitchburg Gas and Electric Light Company; and Vermont Electric Power Company, Inc. tendered for filing in docket Nos. EL00-59-000 and EL00-2005-000 pursuant to Sections 206 and 306 of the Federal Power Act a complaint against New England Power Pool and ISO New England Inc. The filing also was submitted as a rate change filing as permitted by Section 14.14 of the Restated NEPOOL Agreement and Section 205 of the Federal Power Act.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Northeast Utilities Service Company**

[Docket Nos. ER95-1686-007, ER96-496-009, ER97-1359-000, OA97-300-000 and ER98-4604-000]

Take notice that on March 31, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing an amendment to its refund report filed in the captioned dockets in compliance with the Commission's order in *Northeast Utilities Service Company*, 89 FERC ¶ 61,184 (1999).

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. PJM Interconnection, L.L.C.**

[Docket No. ER98-3527-004]

Take notice that on April 3, 2000, the Market Monitoring Unit (MMU) of PJM Interconnection, L.L.C. (PJM), submitted the MMU's report on Enforcing Data Requests. The MMU states that the report is submitted pursuant to the Commission's "Order Approving Market Monitoring Plan as Modified" issued on March 10, 1999 in Docket No. ER98-3527-000. *PJM Interconnection, L.L.C.*, 86 FERC ¶ 61,247, at 61,891 (1999).

The MMU states that copies of this filing were served upon all PJM Members and each state electric utility regulatory commission in the PJM control area.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. PJM Interconnection, L.L.C.**

[Docket No. ER98-3527-005]

Take notice that on April 3, 2000, the Market Monitoring Unit (MMU) of PJM Interconnection, L.L.C. (PJM), submitted the MMU's report on Ancillary Services Markets. The MMU states that the report is submitted pursuant to the Commission's "Order Approving Market Monitoring Plan as Modified" issued on March 10, 1999 in Docket No. ER98-3527-000. *PJM Interconnection, L.L.C.*, 86 FERC ¶ 61,247, at 61,891 (1999).

The MMU states that copies of this report were served upon all PJM members and each electric utility regulatory commission in the PJM Control Area.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Citizens Utilities Company**

[Docket No. ER99-450-001]

Take notice that on March 31, 2000, Citizens Utilities Company filed a refund report in connection with the Line Loss Amendment to Settlement Agreement, which was filed in Docket No. ER99-450-000 on November 2, 1998 and accepted for filing by the Commission by letter order dated December 3, 1998.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. APS Energy Services**

[Docket No. ER99-4122-003]

Take notice that on April 3, 2000, APS Energy Services filed a quarterly report for information only.

**7. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00-1908-001]

Take notice that on March 31, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 27 to the Market Rate Tariff to incorporate a Netting Agreement with El Paso Merchant Energy, L.P. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of March 23, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. WPS Resources Operating Companies**

[Docket No. ER00-2049-000]

Take notice that on March 31, 2000, WPS Resources Operating Companies (WPS), tendered for filing modifications to the rates, terms and conditions of ancillary services under its open access transmission tariff. WPS also filed a schedule providing for Generation Delivery Imbalance Service.

Copies of the filing were served upon the public utility's jurisdictional customers, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Portland General Electric Company**

[Docket No. ER00-2050-000]

Take notice that on March 31, 2000, Portland General Electric Company (PGE) tendered for filing PGE FERC Electric Tariff, Third Revised Volume No. 11 (Tariff), to revise its Market-Based Rates Tariff, Portland General Electric Company, FERC Electric Tariff, Original Volume No. 11.

PGE requests that the revised Tariff become effective on April 30, 2000.

A copy of this filing was served upon the Oregon Public Utility Commission.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. MidAmerican Energy Company**

[Docket No. ER00-2051-000]

Take notice that on March 31, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing, under Section 205 of the Federal Power Act, proposed amendments to its market-based rate Tariff that would incorporate language regarding the reassignment of transmission capacity.

MidAmerican states that copies of this filing have been served on purchasers under Tariff and the Iowa, Illinois and South Dakota public utility commissions.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. New England Power Pool**

[Docket No. ER00-2053-000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Texas Instruments Incorporated (TI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of TI's signature page would permit NEPOOL to expand its membership to include TI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TI a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by TI.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. New England Power Pool**

[Docket No. ER00-2054-000]

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 Statoil Energy Trading, Inc. (SETI). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended (the NEPOOL Agreement), and previously signed by SETI. The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that termination of SETI with an

effective date of April 1, 2000 would relieve SETI, 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 SETI from membership in NEPOOL.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. New England Power Pool**

[Docket No. ER00-2055-000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Calpine Power Services Company (Calpine). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Calpine's signature page would permit NEPOOL to expand its membership to include Calpine. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Calpine a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by Calpine.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. New England Power Pool**

[Docket No. ER00-2056-000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing, a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Statoil Energy Services, Inc. (SESI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of SESI's signature page would permit NEPOOL to expand its membership to include SESI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make SESI a member in NEPOOL. The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by SESI.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. New England Power Pool**

[Docket No. ER00-2057-000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing, a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Conectiv Energy Supply, Inc. (CESI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of CESI's signature page would permit NEPOOL to expand its membership to include CESI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make CESI a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by CESI.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. New England Power Pool**

[Docket No. ER00-2058-000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing, a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Quinipiac Energy LLC (Quinipiac). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Quinipiac's signature page would permit NEPOOL to expand its membership to include Quinipiac. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Quinipiac a member in NEPOOL. The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by Quinipiac.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Elkem Metals Company**

[Docket Nos. ER00-2074-000 and EC00-72-000]

Take notice that on March 31, 2000, Elkem Metals Company (Elkem), pursuant to sections 203 and 205 of the Federal Power Act, tendered for filing: (1) an application for market-based rates; (2) a request for various waivers (including a waiver of the 60-day prior

notice requirements); and (3) a request for authorization to transfer several jurisdictional rate schedules and two transmission lines to Elkem's newly-created affiliate, Elkem Metals Company-Alloy, L.P. The two transmission lines are used to connect Elkem's generation facilities to the transmission grid of American Electric Power Service Corporation (AEP).

*Comment date:* May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Conectiv Delmarva Generation, LLC, Conectiv Energy Supply, Inc.**

[Docket No. ER00-2076-000]

Take notice that on March 31, 2000, Conectiv, on behalf of Conectiv Delmarva Generation, LLC (CDG) and Conectiv Energy Supply, Inc. (CESI), tendered for filing Service Agreement No. 2 for sales by CDG pursuant to its market-based rate tariff to its affiliate CESI and requested expanded market-based rate authority for CESI to sell power to its affiliate Delmarva Power & Light Company.

Conectiv requests an effective date for the filing of June 1, 2000.

Copies of the filing were served upon Delmarva's wholesale requirements customers, and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Board of Public Utilities and the Virginia State Corporation Commission.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. North American Electric Reliability Council**

[Docket No. ER00-2077-000]

Take notice that on April 3, 2000, North American Electric Reliability Council (NERC) filed the description and procedures for a revised market redispatch pilot program to be in effect for the Eastern Interconnection during the period June 1, 2000 through December 31, 2000.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. New England Power Company**

[Docket No. ER00-2078-000]

Take notice that on April 3, 2000, New England Power Company (NEP) submitted for filing a service agreement between NEP and Southern Company Energy Marketing, L.P. for service under NEP's Wholesale Market Tariff, FERC Electric Tariff, Original Volume No. 10.

Copies of the filing were served upon Southern and the Department of Public

Utilities of the Commonwealth of Massachusetts.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. PJM Interconnection, L.L.C.**

[Docket No. ER00-2079-000]

Take notice that on April 3, 2000, PJM Interconnection, L.L.C. (PJM), on behalf of the PJM Reliability Committee, filed amendments to Schedules 5.2, 7, and 11 of the Reliability Agreement Among Load Serving Entities in the PJM Control Area (RAA) to implement Active Load Management procedures and penalties, and to Schedule 14 of the RAA to apply penalties to parties to the RAA that do not follow PJM instructions to implement PJM Emergency procedures.

Copies of this filing were served upon all parties to the RAA and each state electric utility regulatory commission in the PJM control area.

PJM on behalf of the PJM Reliability Committee requests an effective date of June 3, 2000.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. Rumford Power Associates Limited Partnership**

[Docket No. ER00-2080-000]

Take notice that on April 3, 2000, Rumford Power Associates Limited Partnership (Rumford) tendered for filing, under Section 205 of the Federal Power Act, a rate schedule under which Rumford will sell energy, capacity and ancillary services at market-based rates and will reassign transmission capacity.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. New York State Electric & Gas Corporation**

[Docket No. ER00-2081-000]

Take notice that on April 3, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a request for modification of its borderline rate schedules.

NYSEG requests effective dates of February 15, or March 3, 2000, as appropriate to the various changes identified in the filing.

NYSEG has served copies of the filing on the parties affected.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Western Resources, Inc.**

[Docket No. ER00-2084-000]

Take notice that on April 3, 2000, Western Resources, Inc. tendered for filing a Master Power Purchase and Sale Agreement between Western Resources, Inc. and Wabash Valley Power Association, Inc; and a Master Power Purchase and Sale Agreement between Western Resources, Inc. and PG&E Energy Trading-Power, L.P. Western Resources states that the purpose of these agreements is to permit these customers to take service under Western Resources' Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective April 3, 2000.

Copies of the filing were served upon Wabash Valley Power Association, Inc. PG&E Energy Trading-Power, L.P., and the Kansas Corporation Commission.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Indianapolis Power & Light Company**

[Docket No. ER00-2086-000]

Take notice that on April 3, 2000, Indianapolis Power & Light Company (IPL) filed an Interconnection, Operation and Maintenance Agreement Between DTE Georgetown, L.L.C., and Indianapolis Power & Light Company in the above-captioned docket.

IPL requests an effective date of April 4, 2000.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC**

[Docket No. ER00-2087-000]

Take notice that on April 3, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 2 to Supplement No. 8 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 22, 1999, to PECO Energy Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public

Service Commission, and all parties of record.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Potomac Electric Power Company**

[Docket No. ER00-2088-000]

Take notice that on April 3, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and Aquila Energy Marketing Corporation.

An effective date of March 10, 2000 is requested for this service agreement.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation**

[Docket No. ER00-2089-000]

Take notice that on April 3, 2000, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated March 15, 2000 (the Service Agreement) between British Columbia Power Exchange Corporation (Powerex) and OVEC. The Service Agreement provides for non-firm transmission service by OVEC to Powerex. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of March 15, 2000 and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon Powerex.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Carolina Power & Light Company**

[Docket No. ER00-2090-000]

Take notice that on April 3, 2000, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Conectiv Energy Supply, Inc.; and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Conectiv Energy Supply, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of March 29, 2000 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. Central Illinois Light Company**

[Docket No. ER00-2091-000]

Take notice that on April 3, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, Conectiv Energy Supply, Inc.

CILCO requested an effective date of March 31, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. Central Illinois Light Company**

[Docket No. ER00-2092-000]

Take notice that on March 31, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, on April 3, 2000 tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, Conectiv Energy Supply, Inc.

CILCO requested an effective date of March 31, 2000.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**32. Elkem Metals Company-Alloy L.P.**

[Docket No. ER00-2093-000]

Take notice that on March 31, 2000, Elkem Metals Company-Alloy L.P. Elkem-Alloy, tendered for filing Rate Schedule FERC No. 1 and petitioned the Commission for authority to sell electricity at market-based rates and for the granting of waivers of certain Commission regulations.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**33. Central Maine Power Company**

[Docket No. ER00-2094-000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP), tendered for filing Unexecuted Service Agreements For Firm Local Point-to-

Point Transmission Service, Unexecuted Service Agreements For Local Network Transmission Service, and Unexecuted Local Network Operating Agreements. CMP states the instant filing are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests 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 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **34. New York State Electric & Gas Corporation**

[Docket No. ER00-2095-000]

Take notice that on March 31, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing Amended Transmission Service Agreements between NYSEG and Constellation Power Source, Inc. and Morgan Stanley Capital Group, Inc. (the Customers). These Amendments specify that the Customer has agreed to incorporate certain NY ISO provisions into these agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **35. Bangor Hydro-Electric Company**

[Docket No. ER00-2096-000]

Take notice that on March 31, 2000, Bangor Hydro-Electric Company (Bangor Hydro) filed an executed service agreement for retail non-firm point-to-point transmission service with Great Northern Paper, Inc.

Bangor Hydro requests that the agreement become effective on March 1, 2000.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **36. Bangor Hydro-Electric Company**

[Docket No. ER00-2097-000]

Take notice that on March 31, 2000, Bangor Hydro-Electric Company (Bangor Hydro) filed an executed service agreement for firm point-to-point transmission service with Great Northern Paper, Inc.

Bangor Hydro requests that the agreement become effective on March 1, 2000.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **37. Public Service Company of New Mexico**

[Docket No. ER00-2098-000]

Take notice that on March 31, 2000, Public Service Company of New Mexico (PNM), tendered for filing pursuant to section 35.15 of the Regulations to the Federal Energy Regulatory Commission, 18 CFR 35.15 1998, Notices of Cancellation of several old (and no longer used) bundled Economy Energy Agreements. The agreements are being canceled in compliance with the requirements contained in the Commission's Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996) which provide that economy energy transactions must be unbundled.

Pursuant to PNM's filing, the following agreements are to be canceled: Economy Energy Agreement between The City of Burbank, California and PNM, dated February 19, 1988; Economy Energy Agreement between The City of Colton, California and PNM, dated April 1, 1991; Economy Energy Agreement between Idaho Power Company and PNM, dated May 7, 1990; Economy Energy Agreement between The City of Riverside, California and PNM, dated May 17, 1982; Economy Energy Agreement between Pacific Gas & Electric Company and PNM, dated May 12, 1983; and the Economy Energy Agreement between Utah Associated Municipal Power Systems and PNM, dated March 1, 1991. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **38. Western Resources, Inc.**

[Docket No. ER00-2099-000]

Take notice that on March 31, 2000, Western Resources, Inc. (WR), tendered for filing an Energy Service Agreement between WR and the City of St. John, Kansas. WR requests an effective date of June 15, 2001.

Notice of the filing has been served upon the City of St. John, Kansas and the Kansas Corporation Commission.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **39. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company**

[Docket No. ER00-2100-000]

Take notice that on March 31, 2000, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company

(collectively, the CSW Operating Companies), tendered for filing an agreement providing for LG&E Energy Marketing, Inc. (LG&E Energy) to purchase energy under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of March 1, 2000 for the agreement with LG&E Energy and, accordingly, seek waiver of the Commission's notice requirements. The CSW Operating Companies state that a copy of the filing was served on LG&E Energy and the Public Utility Commission of Texas.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **40. South Carolina Electric & Gas Company**

[Docket No. ER00-2101-000]

Take notice that on March 31, 2000, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing PG&E Energy Trading—Power, L.P. as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

Copies of this filing were served upon PG&E Energy Trading—Power, L.P. and the South Carolina Public Service Commission.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **41. Northwestern Wisconsin Electric Company**

[Docket No. ER00-2102-000]

Take notice that on April 3, 2000, Northwestern Wisconsin Electric Company, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would decrease revenues from jurisdictional sales by \$3,068.62 based on the 12 month period ending April 30, 2000. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1, 2000.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 2000.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**42. Northern States Power Company (Minnesota Company), Northern States Power Company, (Wisconsin Company)**

[Docket No. ER00-2103-000]

Take notice that on April 3, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Ontario Power Generation Inc. (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on March 9, 2000.

*Comment date:* April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**43. Northern States Power Company, (Minnesota), Northern States Power Company, (Wisconsin)**

[Docket No. ER00-2104-000]

Take notice that on April 4, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Williams Energy Marketing & Trading Company.

NSP requests that the Commission accept the Agreement effective March 15, 2000.

*Comment date:* April 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**44. Duquesne Light Company**

[Docket No. ER00-2111-000]

Take notice that on March 31, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated March 29, 2000 with PG&E Energy Trading-Power, LP under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PG&E Energy Trading-Power, LP as a customer under the Tariff.

DLC requests an effective date of March 29, 2000 for the Service Agreement.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**45. United American Energy Corp., PowerGasSmart.com, Inc.**

[Docket Nos. ER00-2121-000 and ER00-2147-000]

Take notice that on April 3, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 2000.

*Comment date:* May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,***Secretary.*

[FR Doc. 00-9471 Filed 4-14-00; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. EC00-71-000, et al.]****Reliant Energy Northeast Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings**

April 7, 2000.

Take notice that the following filings have been made with the Commission:

**1. Reliant Energy Northeast Generation, Inc.**

[Docket No. EC00-71-000]

Take notice that on March 31, 2000, Reliant Energy Northeast Generation, Inc. (Applicant), an indirect, wholly-owned subsidiary of Reliant Energy, Inc., filed an application under Section 203 of the Federal Power Act for approval of a reorganization of certain public utility companies it expects to acquire and the subsequent sale and leaseback of certain jurisdictional transmission facilities associated with the Keystone, Conemaugh and Shawville Generating Facilities. The restructuring relates to the ownership of generating plants, associated transmission facilities and jurisdictional wholesale sale tariffs and agreements

that the Applicant expects to acquire as part of its purchase of equity interests in Sithe Maryland Holdings LLC, Sithe Pennsylvania Holdings LLC and Sithe New Jersey Holdings LLC.

*Comment date:* May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Nevada Power Company**

[Docket No. ER00-2015-000]

Take notice that on March 31, 2000, Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power Act, twelve rate schedules applicable to sales from the six bundles of generation facilities that Nevada Power intends to divest. The twelve rate schedules consist of six amended Generation Aggregation Tariffs and six Transition Power Purchase Contracts that will apply to sales from the divested generation to Nevada Power so that Nevada Power may meet its provider of last resort, wholesale requirements, and ancillary services obligations.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Central Maine Power Company**

[Docket No. ER00-2017-000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, (i) unexecuted Interconnection Agreements, dated as of March 1, 2000 (the IAs); and (ii) unexecuted service agreement for Non-Firm Local Point-to-Point Transmission Service, dated as of March 1, 2000 (the TSAs), for the following customers:

- (1) City of Lewiston;
- (2) Foss Mill;
- (3) Kennebec Water District;
- (4) Forester Manufacturing Company;
- (5) Marsh Stream;
- (6) Marsh Power;
- (7) Moosehead Energy Inc.;
- (8) Stony Brook;
- (9) Wright Brook; and
- (10) Sparhawk Mill.

The IA is CMP's standard form IA for customers whose facilities have a nameplate rating of less than 2,500 kW, do not require construction to effectuate or maintain their interconnection, and, per the New England Independent System Operator, do not require remote terminal units. The IA provides for interconnection service to the customers' facilities at the rates, terms, charges, and conditions set forth therein. The TSA provides for Non-Firm Point-to-Point Transmission Service.

CMP is requesting that the IAs become effective March 1, 2000; and the TSAs become effective March 1, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and copies of this filing (specific to the particular customer only) have been sent to the customers listed above.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Sierra Pacific Power Company

[Docket No. ER00-2018-000]

Take notice that on March 31, 2000, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 205 of the Federal Power Act, six rate schedules applicable to sales from the three bundles of generation facilities that Sierra intends to divest. The six rate schedules consist of three generally applicable Generation Tariffs and three Transition Power Purchase Contracts that will apply to sales from the divested generation to Sierra so that Sierra may meet its provider of last resort, wholesale requirements, and ancillary services obligations.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 5. California Independent System Operator Corporation

[Docket No. ER00-2019-000]

Take notice that on March 31, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a proposed amendment (Amendment No. 27) to the ISO Tariff. Amendment No. 27 includes proposed Tariff revisions implementing a revised methodology for recovery of the transmission Access Charge.

Copies of the filing were served upon the Public Utilities Commission of the State of California, the California Energy Commission, and the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Central Maine Power Company

[Docket No. ER00-2020-000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, (i) an unexecuted Interconnection Agreements, dated as of March 1, 2000

(the IA); and (ii) an unexecuted service agreement for Non-Firm Local Point-to-Point Transmission Service, dated as of March 1, 2000 (the TSA), for International Paper Company.

The IA provides for interconnection service to the customers' facilities at the rates, terms, charges, and conditions set forth therein. The TSA provides for Non-Firm Point-to-Point Transmission Service.

CMP is requesting that the IA become effective March 1, 2000; and the TSA become effective March 1, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and International Paper Company, c/o Anthony Buxton, its outside counsel.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 7. New England Power Pool

[Docket No. ER00-2059-000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Associated Industries of Massachusetts (AIM). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of AIM's signature page would permit NEPOOL to expand its membership to include AIM. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make AIM a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by AIM.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Central Maine Power Company

[Docket No. ER00-2061-000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP) tendered for filing "Unexecuted Service Agreements For Local Network Transmission Service" and "Unexecuted Local Network Operating Agreements". CMP states the instant filing is contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests 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 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 9. Illinois Power Company

[Docket No. ER00-2064-000]

Take notice that, on March 31, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement under which Illinois Municipal Electric Agency will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of March 1, 2000.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Boston Edison Company

[Docket No. ER00-2065-000]

Take notice that on March 31, 2000, Boston Edison Company (BECo) tendered for filing an amendment to its Open Access Transmission Tariff (Tariff), which modifies the billing and payment provisions of the Tariff to allow BECo to recover its transmission costs on a more timely basis.

*Comment date:* April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 11. Pacific Gas and Electric Company

[Docket No. ER00-2075-000]

Take notice that on March 31, 2000, Pacific Gas and Electric Company (PG&E) tendered for filing changes to rate schedules for electric transmission service to the following customers: Bay Area Rapid Transit District, California Department of Water Resources, Dynegy Power Services, Minnesota Methane, Modesto Irrigation District, Northern California Power Agency, Sacramento Municipal Utility District, the City and County of San Francisco, California, the City of Santa Clara, California (also known as Silicon Valley Power), the Transmission Agency of Northern California, Turlock Irrigation District and the Western Area Power Administration with services under Contract 2948A rate schedules A and B for the Sonoma County Water Agency, the Cities of Healdsburg, Lompoc and Ukiah and the Delta Pumping Plant. The changes include a change in the existing wholesale transmission rate

methodologies and a rate change to reflect the current cost of providing service to the foregoing customers.

Copies of this filing have been served upon the California Public Utilities Commission and the affected customers.

*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> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-9302 Filed 4-14-00; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

April 11, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 1005-006.

c. *Date Filed:* March 7, 2000.

d. *Applicants:* Public Service Company of Colorado (PSCo or transferor) and City of Boulder, Colorado (Boulder or transferee).

e. *Name of Project:* Boulder Canyon.

f. *Location:* On Middle Boulder Creek in Boulder County, Colorado in Roosevelt National Forest. The project does not utilize tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(t).

h. *Applicant Contacts:* For transferor—William M. Dudley, Associate General Counsel, New Century Services, Inc., 1225 17th Street, Suite 600, Denver, CO 80202, (303) 294-2500.

For transferee—Karl F. Kumli, III, Special Counsel for the City of Boulder, Dietze and Davis, P.C., 2060 Broadway, Suite 400, Boulder, CO 80302-5203, (303) 447-1375.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219-2715, or e-mail address: [thomas.papsidero@ferc.fed.us](mailto:thomas.papsidero@ferc.fed.us).

j. *Deadline for filing comments and/or motions:* May 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 8888 First Street, NE, Washington, DC 20426.

Please include the project number (1005-006) on any comments or motions filed.

k. *Description of Transfer:* PSCo requests approval to transfer its license to Boulder. The transfer is sought pursuant to an Asset Purchase Agreement dated February 29, 2000. PSCo intends to retain various easement and fee interests associated with its electric transmission and distribution facilities within the project boundary. The applicants state that the transfer will facilitate the municipal water supply function of the project as Boulder is the primary beneficiary of the municipal water supply.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). Copies are also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon such representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9476 Filed 4-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

April 11, 2000.

Take notice that on the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2503-056.

c. *Date Filed:* January 20, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee-Toxiway Hydroelectric Project.

f. *Location:* On Lake Keowee at the Backwater Landing Subdivision, in Wagner Township, in Oconee County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12Y), Charlotte, NC 28201-1006 (704) 382-5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219-3076.

j. *Deadline for filing comments and or motions:* May 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2503-056) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Special Properties of South Carolina, Inc., 1.86 acres of project land for the construction of 48 boat slips and a boat ramp with a loading dock. The boat slips would provide access to the reservoir for residents of the Backwater Landing Subdivision. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comments date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as

applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9477 Filed 4-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Intent To File an Application for a Subsequent License

April 11, 2000.

a. *Type of Filing:* Notice of Intent to File An Application for a Subsequent License.

b. *Project No.:* 6514.

c. *Date Filed:* March 13, 2000.

d. *Submitted By:* City of Marshall, Michigan—current licensee.

e. *Name of Project:* City of Marshall Hydroelectric Project.

f. *Location:* On the Kalamazoo River near the City of Marshall, in Calhoun County, Michigan. The project does not utilize federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Thomas Tarkiewicz, City of Marshall, 323 West Michigan Avenue, Marshall, MI 49068, (616) 781-5183.

i. *FERC Contact:* Tom Dean, [thomas.dean@ferc.fed.us](mailto:thomas.dean@ferc.fed.us), (202) 219-2778

j. *Effective date of current license:* June 1, 1955.

k. *Expiration date of current license:* May 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) the 12-foot-high, 150-foot-long Perrin No. 1 Dam; (2) the 12-foot-

high, 90-foot-long Perrin No. 2 Dam; (3) a 130-acre reservoir with a normal pool elevation of 899 feet msl; (4) a 70-foot-long canal-type forebay; (5) a powerhouse containing three generating units with a total installed capacity of 463 kW; and (6) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 2003.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9478 Filed 4-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

April 11, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 11685-001.

c. *Dated filed:* September 10, 1999.

d. *Applicant:* The Stockport Mill Country Inn.

e. *Name of Project:* Stockport Mill Country Inn Water Power Project.

f. *Location:* On the Muskingum River Lock and Dam No. 6 near the town of Stockport, in Morgan County, Ohio. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r)

h. *Applicant Contact:* David Brown Kinlock, Soft Energy Associates, 414 South Wenzel Street, Louisville, KY 40204, (502) 589-0975.

i. *FERC Contact:* Tom Dean, [thomas.dean@ferc.fed.us](mailto:thomas.dean@ferc.fed.us), (202) 219-2778.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on

each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is now ready for environmental analysis.

l. *Description of the Project:* The proposed project would consist of the following facilities: (1) The existing 20-foot-high, 482-foot-long Muskingum Lock and Dam No. 6 (including the navigational lock water retaining structure); (2) an existing 476-acre reservoir with a normal pool elevation of 640.1 feet msl; (3) an existing 20 foot by 24 foot forebay with a 19-foot-wide vertical trashrack; (4) an existing powerhouse in the basement of the mill containing two proposed generating units with a total installed capacity of 235 kW; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208-1371. The application may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all

comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-9479 Filed 4-14-00; 8:45 am]

**BILLING CODE 6717-01-M**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-6579-1]**

### **Agency Information Collection Activities: Proposed Collection; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

National Oil and Hazardous Substances Pollution Contingency Plan—Subpart J, EPA ICR 1664.04, OMB Control Number 2050-0141, expiration date—8/31/00. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before May 17, 2000.

**ADDRESSES:** Interested persons may obtain a copy of the ICR without charge by contacting U.S. Environmental Protection Agency, 5203G, 1200 Pennsylvania Avenue NW, Washington DC 20460. Materials relevant to this ICR may be inspected from 9 a.m. to 4 p.m., Monday through Friday, by visiting the Public Docket, located at 1235 Jefferson-Davis Highway (ground floor), Arlington, Virginia 22202. The docket number for this notice is SPSUBJ. The telephone number for the Public Docket is (703) 603-9232.

**FOR FURTHER INFORMATION CONTACT:** William "Nick" Nichols, (703) 603-9918, Facsimile Number (703) 603-9116, e-mail: [nichols.nick@epa.gov](mailto:nichols.nick@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those which manufacturer, sell, distribute and/or use oil spill dispersants, other chemicals, and other spill mitigating devices and substances that may be used in carrying out the NCP, as listed in 40 CFR 300.900 on land or waters of the United States.

*Title:* National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J (NCP)

(OMB Control No. 2050-0141; EPA ICR No.1664.04), expiring 8/31/00.

*Abstract:* Subpart J of the NCP allows and regulates the use of chemical and biological oil spill cleanup and control agents. The information collected is supplied by the manufacturer of such products. This information and data are then analyzed by EPA to determine the appropriateness, and under which category, the product may be listed on the NCP Product Schedule. This product data is critical for EPA to obtain in order to assure that effectiveness and toxicity data for these products is available to the oil spill community in order to use them legally and effectively. Responses to the collection

of information are mandatory if EPA determines that the products specifications require its listing under subpart J (40 CFR 300.5a Definitions). However, manufacturers volunteer to have their product analyzed. The authority to review and use a product is 40 CFR 300.910. Confidentiality of data, ingredients, and other proprietary information for the products is maintained by EPA. Manufacturers may use any certified lab in the U.S. to test their products effectiveness and toxicity. The cost of such test range from \$1,000 to \$5,000 per test. The process to have a product listed takes at least 30 days, but no longer than 60 days, depending on the accuracy and completeness of the product information package provided to EPA by the manufacturer. Due to the technical and graphical data required to be listed, electronic submissions are not accepted.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

**Burden Statement:** Estimated projected cost and hour burden for listing a product are between 14 and 40 hours at a cost ranging from under \$4,000 to \$10,000 depending on the what the lab charges the manufacture to test the product. EPA estimates that an average of 14 product applications are submitted each year at a cost of \$83,000 (\$6,000 average). Additional data requirements include changes to: manufacturer's address, name of product, distributors, product specifications, and any other changes to

the product. Changes to the product's composition may require further testing and data submission to EPA. Otherwise the cost to supply this information to EPA is a one-time cost. EPA does not charge any fees to maintain records for a product nor are there any cost to update the product's file other than those mentioned above. There are no required capital, start up cost or fees required by EPA to have a product listed.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 5, 2000.

**Stephen D. Luftig,**

*Director, Office of Emergency and Remedial Response.*

[FR Doc. 00-9391 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6579-7]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request NSPS, Flexible Vinyl and Urethane Coating and Printing

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart FFF, New Source Performance Standards for Flexible Vinyl and Urethane Coating and Printing, OMB Control Number 2060-0073 which expires on June 30, 2000. The ICR describes the nature of the information collection and its

expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No.1157.06. For technical questions about the ICR contact Ginger Gotliffe at (202) 564-7072.

#### SUPPLEMENTARY INFORMATION:

**Title:** NSPS Subpart FFF, New Source Performance Standards for Flexible Vinyl and Urethane Coating and Printing (OMB Control No. 2060-0073 ; EPA ICR No.1157.06) expiring 06/30/00. This is a request for extension of a currently approved collection.

**Abstract:** The New Source Performance Standards (NSPS) for Flexible Vinyl and Urethane Coating and Printing were promulgated on June 29, 1984 (49 FR 26892). The effective date was January 18, 1983.

These standards of performance for this category of new stationary sources of hazardous air pollutants are required by Section 111 of the Clean Air Act. Facilities may meet the standards by using materials with a low concentration of Volatile Organic compounds (VOCs), or by installing emission control devices. The information that is required to be submitted to the Agency or kept at the facility is needed to insure compliance with the regulation. These include initial one time notifications, performance tests plans and reports and records of maintenance and shutdown, startup, and malfunctions. For facilities that install CMS there are performance tests, and maintenance reports. Excess emissions reports are submitted semiannually. Responses to the collection of information are mandatory (NSPS 60 Subpart FFF).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/29/99 (64 FR 58396 ); no comments were received.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* owners or operators of rotogravure lines; print/coat flexible vinyl/urethane products.

*Estimated Number of Respondents:* 10.

*Frequency of Response:* one time notifications, semiannual reports, and monthly recordkeeping.

*Estimated Total Annual Hour Burden:* 329.

*Estimated Total Annualized Capital, O&M Cost Burden:* \$52,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1157.06 and OMB Control No.2060-0073 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503

Dated: April 4, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00-9384 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6579-8]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standards of Performance for New Stationary Sources (NSPS) Lead-Acid Battery Manufacturing Plants

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for New Stationary Sources (NSPS) Lead-Acid Battery Manufacturing Plants, Part 60, Subpart KK; OMB No. 2060-0081; EPA No. 1072.06; expiration date is June 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No.1072.06. For technical questions about the ICR, please contact: Deborah Thomas at (202) 564-5041.

#### SUPPLEMENTARY INFORMATION:

*Title:* NSPS, Lead Acid Battery Manufacturing Plants, OMB Control No. 2060-0081; EPA ICR No.1072.06, expiration 6/30/00. This is a request for extension of a currently approved collection.

*Abstract:* NSPS for Lead Acid Battery Manufacturing Plants were developed to ensure that air emissions from these facilities do not cause ambient concentrations of lead particulate matter to exceed levels that may reasonably be anticipated to endanger public health and the environment. Owners or operators of lead acid battery manufacturing plants subject to NSPS must notify EPA of construction, reconstruction, modification, anticipated and actual startup dates, and results of performance tests. These facilities must also maintain records of performance test results, startups, shutdowns, and malfunctions. In order

to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Reporting and recordkeeping requirements on the part of the respondent are mandatory under section 114 of the Clean Air Act as amended and 40 CFR part 60. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 1999 (64 FR 58398); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners/Operators of Lead-Acid Battery Manufacturing Plants

*Estimated Number of Respondents:* 82.

*Frequency of Response:* 1/yr/ respondent.

*Estimated Total Annual Hour Burden:* 123 hours.

*Estimated Total Annualized Capital, O & M Cost Burden:* \$18,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1072.06 and OMB No. 2060-0081 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and  
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 14, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00-9385 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6579-9]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060-0226, ICR No. 1596.05, expiration date 7/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by

email at [farmer.sandy@epamail.epa.gov](mailto:farmer.sandy@epamail.epa.gov), or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1596.05. For technical questions about the ICR, contact Ms. Kelly Davis at (202)564-2303, fax:(202)565-2096 or email: [davis.kelly@epa.gov](mailto:davis.kelly@epa.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990 (OMB Control No. 2060-0226; EPA ICR No. 1596.05) expiring 7/31/00. This is a request for extension of a currently approved collection.

**Abstract:** Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, identifies acceptable substitutes. Responses to the collection of information are mandatory under Section 612 for anyone who sells or, in certain cases, uses substitutes for an ozone-depleting substance after April 18, 1994, the effective date of the final rule. Under CAA section 114(c), emissions information may not be claimed as confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on January 26, 2000, at 65 FR 4243. No comments were received.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection is estimated to average 30 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating,

and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** manufacturers, importers, formulators and processors of substitutes for ozone-depleting substances.

**Estimated Number of Respondents:** 330.

**Frequency of Response:** Once.

**Estimated Total Annual Burden:** 10,363 hours.

**Estimated Total Annualized Capital and Operating & Maintenance Cost Burden:** \$44,452.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1596.05 and OMB Control No. 2060-0226 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Ave. NW, Washington, DC, 20460;

and  
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 10, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00-9387 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6579-6]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards for the Use or Disposal of Sewage Sludge

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Title*: Standards for the Use or Disposal of Sewage Sludge; EPA ICR Number 0229.13; OMB Control Number 2040-0004; expiration date September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 0229.13. For technical questions about the ICR contact Dr. Alan B. Rubin; Telephone No. 202-260-7589.

**SUPPLEMENTARY INFORMATION:**

*Title*: Standards for the Use or Disposal of Sewage Sludge (OMB Control No. 2040-0004; EPA ICR No. 0229.13; expiring September 30, 2001). This is a revision of a currently approved collection.

*Abstract*: This ICR estimates the total burden hours for sewage sludge incinerator owners/operators (SSIOOs) to comply with self implementing requirements for sewage sludge incinerators under subpart E of 40 CFR part 503, Standards for the Use or Disposal of Sewage Sludge. On February 19, 1993, EPA published the final 40 CFR part 503 Rule at 58 FR 9248. For the most part, this rule was designed to be self-implementing with the exception of certain provisions of the sewage sludge incineration subpart E of the Rule. In order to make the entire part 503 Rule self-implementing, the Agency on August 4, 1999 at 64 FR 42551 published Phase 1 Amendments to Round 1 of part 503. Included in these amendments were requirements for SSIOOs to provide the permitting authority certain information as specified in the rule that would allow the permitting authority to determine whether SSIOOs are in compliance with the numerical standards section of subpart E of the part 503 Rule. The specific sections of the part 503 Rule that were amended to effect these requirements are sections 503.43(e)(2), 503.43(e)(3) (ii), and 503.43(e)(4). The requirement for SSIOOs to perform air dispersion modeling and run performance tests to comply with Subpart E numerical standards have always been in the base part 503 Rule

and burden hours for these activities were included in the base part 503 Rule ICR. However, the base part 503 Rule required the permitting authority to specify to the SSIOOs the air dispersion model and model parameters to use as well as specify the protocol for running the incinerator performance test. The Phase 1 Amendments now require the SSIOOs to select this information from EPA-published guidance documents and to submit this information to the permitting authority. This ICR estimates the burden hours for this 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 EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 14, 1999 (64 FR 69755). No comments were received.

*Burden Statement*: The annual public reporting and recordkeeping burden for this collection of information is estimated to average five hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities*:

Sewage sludge incinerator owners/operators.

*Estimated Number of Respondents*: 30.

*Frequency of Response*: Once per five years.

*Estimated Total Annual Hour Burden*: 150 hours.

*Estimated Total Annualized Cost Burden (non-labor)*: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No. 0229.13 and OMB Control No. 2040-0004 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 4, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00-9388 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6576-5]

**Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Science Applications International Corporation and Its Subcontractors**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Environmental Protection Agency ("EPA") hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to the Science Applications International Corporation ("SAIC"), of San Francisco, California, and its subcontractors, Superfund confidential business information ("CBI") submitted to EPA Region 9.

**DATES:** Comments, pursuant to 40 CFR 2.310(h)(2), may be submitted by April 27, 2000.

**ADDRESSES:** Comments should be sent to: Environmental Protection Agency, Region 9, Katherine Meltzer (PMD-8), 75 Hawthorne Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Katherine Meltzer, Policy & Management Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1609.

**SUPPLEMENTARY INFORMATION:**

### Notice of Required Determinations, Contract Provisions and Opportunity To Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, (commonly known as "Superfund") requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract, No. 68-S9-00-10, with SAIC for Superfund enforcement support services. These services will be provided to EPA by SAIC and its subcontractors Cotton & Co. of Alexandria, VA; Indus Corporation of Vienna, VA; Jonas & Associates, Inc. of Walnut Creek, CA; Petroleum Properties of Dixon CA; KPMG LLP of San Francisco, CA; McDonald & Associates of Capay, CA; Orswell & Kasman of Pasadena, CA; Power Partners, Inc. of San Francisco, CA; and ReVision, Inc. of Denver, CO. EPA has determined that disclosure of CBI to SAIC employees, and its subcontractors' employees, is necessary in order that SAIC may carry out the work required by that contract with EPA. The information EPA intends to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Superfund sites. The information would be disclosed to the contractor and its subcontractor for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii), incorporated by reference into 40 CFR 2.310(h)(2). EPA Region 9 will require that each SAIC employee and subcontractor employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by SAIC and its subcontractors for performance of the work required by the contract or upon completion of the contract or subcontract.

Dated: March 30, 2000.

**Keith Takata,**

*Director, Superfund Division, EPA, Region 9.*  
[FR Doc. 00-9092 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6575-8]

#### Effluent Guidelines Task Force Open Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

**DATES:** The meeting will be held on Wednesday, May 24, 2000 from 9 a.m. to 5 p.m., and Thursday, May 25, 2000 from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will take place at the Hotel Washington, 515 15th Street, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Beverly Randolph, Office of Water (4303), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260-5373; fax (202) 260-7185.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines Program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by May 12, 2000 will be considered by the Task Force at or subsequent to the meeting.

Dated: April 4, 2000.

**Geoffrey H. Grubbs,**

*Director, Office of Science and Technology.*  
[FR Doc. 00-9545 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6578-8]

#### Gulf of Mexico Program's Management Committee Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee (MC).

**DATES:** The MC meeting will be held on Wednesday, May 10, 2000 from 1:00 p.m. to 5:30 p.m. and on Thursday, May 11, 2000 from 8:00 a.m. to 1:00 p.m.

**ADDRESSES:** The meeting will be held at the Chateau Sonesta Hotel, 800 Iberville Street, New Orleans, Louisiana, (504) 586-0800.

**FOR FURTHER INFORMATION CONTACT:** Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529-6000 at (228) 688-2421.

**SUPPLEMENTARY INFORMATION:** Proposed agenda items will include: GMP Workplan Status-Key Milestones and Deliverables for FY 2000, Coordinated Out-year Federal Budget Development follow-up, Gulf of Mexico Regional Panel Workplan implementation discussion, Coastal America Regional Implementation Team joint projects discussion, review of State Coastal Zone Management Agency request for representation on GMP MC, Joint Gulf States Coastal Monitoring Program progress review, Mercury Contamination Report presentation, NOAA coastal programs overview and partnering opportunities discussion, and Communications Committee

Report. The meeting is open to the public.

Dated: April 6, 2000.

**James D. Giattina,**

*Director, Gulf of Mexico Program Office.*

[FR Doc. 00-9390 Filed 4-14-00; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6579-4]

### National Drinking Water Advisory Council; Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

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

**ACTION:** Notice.

**SUMMARY:** Under section 10(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on May 2, 2000 from 1 pm until 5 pm ET (approximately), at 401 M Street SW., Washington, DC 20460, Conference Room 1209, East Tower. The meeting is open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the third and final meeting to address regulatory determination from the CCL. The purpose of the meeting is to continue discussions on the development of recommended protocols for regulatory determinations for CCL chemical and microbial contaminants, finalize the draft framework developed by the EPA at the first meeting, provide specific recommendations for analyzing and presenting the available scientific data, and recommend methods to identify and document the judgments made to arrive at a conclusion. For CCL regulatory determinations, the Working Group will develop protocols for both chemical and microbial contaminants that will be robust enough to apply to contaminants on the current and future CCLs. Due to the statutory deadlines mandated by the SDWA's 1996 Amendments, the Working Group will finalize the protocol for CCL regulatory determinations before beginning work on the protocol(s) for the 6-year review of existing NPDWRs.

The working group members have also been asked to draft proposed position papers for deliberation by the advisory council, and provide advice and recommendations to the full National Drinking Water Advisory Council.

#### FOR FURTHER INFORMATION CONTACT:

April McLaughlin, Designated Federal Officer, Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street SW., Washington, DC 20460. The telephone number is 202-260-5524, fax 202-401-6135, and e-mail [mclaughlin.april@epa.gov](mailto:mclaughlin.april@epa.gov).

Dated: April 10, 2000.

**Janet Pawlukiewicz,**

*Acting Designated Federal Officer National Drinking Water Advisory Council.*

[FR Doc. 00-9386 Filed 4-14-00; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 6567-4]

### Proposed Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA for the Lawton Property Superfund Site

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposal of Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA with Hoskins for the Lawton Property Superfund Site.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA ("Agreement"), 42 U.S.C. 9622(h), for the Lawton Property Superfund Site located in Detroit, Michigan, has been executed by the Settling Party, Hoskins Manufacturing Company, Inc. ("Hoskins"). The proposed Agreement would resolve certain potential claims of the United States under Section 107 of CERCLA, 42 U.S.C. 9607, against Hoskins. The proposed Agreement would require Hoskins to pay the EPA Hazardous Substance Superfund \$27,000 for reimbursement of response costs. No further U.S. EPA response actions are contemplated at this time.

**DATES:** Comments on the proposed Agreement must be received by U.S. EPA on or before May 17, 2000.

**ADDRESSES:** A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Ms. Orelia E. Merchant at (312) 886-2241, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Orelia E. Merchant, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C-14J), Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Orelia E. Merchant at (312) 886-2241, of the U.S. EPA, Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed Agreement pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i). Comments should be sent to the address identified in this document.

**Richard C. Karl,**

*Acting Director, Superfund Division, Region 5.*

[FR Doc. 00-9539 Filed 4-14-00; 8:45 am]

BILLING CODE 6560-50-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6580-1]

### Proposed Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act; Organic Chemical, Inc. Kent County, MI

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

**ACTION:** Notice; request for public comment on proposed CERCLA 122(g)(4) agreement.

**SUMMARY:** In accordance with section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given for a proposed administrative agreement concerning the Organic Chemical, Inc. hazardous waste site at 3921 Chicago Drive, S.W. in Grandville, Kent County, Michigan (the "Site"). EPA proposes to enter into this agreement under the authority of section 122(g) of CERCLA. In addition to the review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. The proposed agreement resolves an EPA claim under

CERCLA against 89 *de minimis* parties (the "Settling Parties").

Under the proposed agreement, the Settling Parties will pay \$199,998 into EPA's Hazardous Substances Superfund to resolve EPA's claims against them for response costs incurred by EPA at the Site. EPA incurred response costs investigating an imminent and substantial endangerment to human health and the environment posed by the presence of hazardous substances at the Site. EPA also incurred response costs overseeing clean-up activities conducted by potentially responsible parties at the site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may modify or withdraw its consent to this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the U.S. EPA record center, Room 714, 77 West Jackson Blvd, Chicago, Illinois, or upon request of Jerome Kujawa at the address below.

**DATES:** Comments on the proposed agreement must be received by EPA on or before May 17, 2000.

**ADDRESSES:** Comments should be addressed to the Jerome Kujawa, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, and should refer to: In the Matter of Organic Chemical, Grandville, MI, U.S. EPA Docket No. V-W-00-C-581.

**FOR FURTHER INFORMATION CONTACT:** Jerome Kujawa, U.S. Environmental Protection Agency, Office of Regional Counsel, C-14J, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, telephone number is (312) 886-6731.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Record Center Room 714, at the above address.

**Authority:** The Comprehensive Environmental Response, Compensation, and

Liability Act, as amended 42, U.S.C. 9601-9675.

**William E. Munro,**

*Director, Superfund Division, Region 5.*

[FR Doc. 00-9540 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-M**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6578-9]

### Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act Regarding the U.S. Radium Superfund Site, Orange, NJ

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement and request for public comment.

**SUMMARY:** The United States Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve Monique D'Onfrio's liability for certain response costs incurred by EPA at the U.S. Radium Superfund Site in Orange, New Jersey.

**DATES:** Comments must be provided on or before May 17, 2000.

**ADDRESSES:** Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the U.S. Radium Superfund Site: U.S. Radium Administrative Settlement, under section 122 (h) of CERCLA, U.S. EPA Index No. II-CERCLA-02-2000-2003.

**FOR FURTHER INFORMATION CONTACT:** U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: Virginia A. Curry, Esq. (212) 637-3134, or [curry.virginia@epa.gov](mailto:curry.virginia@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the U.S. Radium Superfund Site located in Orange, New Jersey. Section 122(h) of CERCLA authorizes EPA to settle certain claims for costs

incurred by the United States when the settlement is in the public interest and has received the approval of the Attorney General. EPA permanently relocated Monique D'Onfrio, the owner of a property within the U.S. Radium Site, to facilitate the remediation of the Site. Monique D'Onfrio has agreed to sell the Site property after it has been cleared up and to give EPA the net sale proceeds in partial reimbursement of response costs incurred at the Site.

Dated: April 5, 2000.

**Jeanne M. Fox,**

*Regional Administrator, Region 2.*

[FR Doc. 00-9389 Filed 4-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[LBP-402404-KS-A; FRL-6551-7]

### Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Kansas Authorization Application; Notice of Public Hearing

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

**ACTION:** Notice.

**SUMMARY:** This notice announces that EPA has scheduled a public hearing to allow members of the public an opportunity to offer testimony concerning the State of Kansas' application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities.

**DATES:** The public hearing will be held on May 2, 2000, beginning at 10 a.m.

**ADDRESSES:** The public hearing will be held at the public library located at 625 Minnesota Ave., Kansas City, KS.

**FOR FURTHER INFORMATION CONTACT:** Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead & Indoor Programs Branch, Air, RCRA & Toxics Division, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101; telephone number: (913) 551-7518; e-mail address: [talley.mazzie@epa.gov](mailto:talley.mazzie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the State of Kansas. Since other entities may also be interested, the Agency has

not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

## II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

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

*B. In person.* The Agency has established an official record for this action under docket control number LBP-402404-KS-A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The docket is located at the regional office 901 North 5<sup>th</sup> St., Kansas City, KS.

## III. Background

In the Federal Register of January 14, 2000 (65 FR 2396) (FRL-6397-6), EPA published a notice of request for comments and opportunity for public hearing on the State of Kansas' application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This action is in response to a request EPA received from a member of the public to hold such a public hearing on the application.

## IV. Procedures

In order to ensure that all participants are able to make presentations, EPA may place limits on the amount of time allocated to each commenter. Commenters are encouraged to bring written copies of their comments and submit them to EPA.

## List of Subjects

Environmental protection, Hazardous substances, Lead.

Dated: April 5, 2000.

**Dennis Grams,**

*Administrator, Region VII.*

[FR Doc. 00-9546 Filed 4-14-00; 8:45 am]

BILLING CODE 6560-50-F

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 2000.

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Richard Dean Goppert, as Trustee of the Revocable Inter Vivos Trust Agreement of Richard D. Goppert,* Kansas City, Missouri; to acquire voting shares of Kansas Agencies & Investments, Inc., Overland Park, Kansas, and thereby indirectly acquire voting shares of Garnett State Savings Bank, Garnett, Kansas.

Board of Governors of the Federal Reserve System, April 11, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-9453 Filed 4-14-00; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 11, 2000.

**A. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *The Dai-Ichi Kangyo Bank, Limited,* Tokyo, Japan; to acquire CIT OnLine Bank, Salt Lake City, Utah, and thereby to engage de novo indirectly through the CIT Group, Inc., New York, New York, in the United States in industrial loan company activities, pursuant to section 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, April 11, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-9452 Filed 4-14-00; 8:45 am]

BILLING CODE 6210-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Assistant Secretary for Planning and Evaluation; Notice of Grant Award with Southern Illinois University at Edwardsville

**AGENCY:** Office of the Secretary, Office of the Assistant Secretary, for Planning and Evaluation (ASPE).

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the award of a grant in the amount of \$782,000 for the period of April 1, 2000 through March 31, 2001 to Southern Illinois University at Edwardsville in support of the SIUE Institute for Urban Research. This project was earmarked in the FY 2001 Policy Research Appropriation.

For more information contact Mrs. Adrienne D.B. Little, Grant Management Officer, Office of the Assistant Secretary for Planning and Evaluation, Room 405F, 200 Independence Avenue, SW, Washington, DC 20201.

Dated: April 3, 2000.

**Margaret A. Hamburg,**  
Assistant Secretary for Planning and Evaluation.

[FR Doc. 00-9418 Filed 4-14-00; 8:45 am]

BILLING CODE 4154-05-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary, Assistant Secretary for Planning and Evaluation

#### Notice Inviting Applications for Enhancements of Welfare Outcomes Research for Fiscal Year 2000

**AGENCY:** The Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

**ACTION:** Announcement of the availability of funds and request for applications from States and large counties that propose to enhance current research and monitoring efforts regarding key outcomes related to welfare reform.

**SUMMARY:** The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the availability of funds and invites States and large counties to propose enhancements to existing welfare outcome data collection efforts. ASPE anticipates that approximately four to six States or large counties will receive funding. ASPE is interested in funding only those applicants who propose enhancements that fill knowledge gaps that can not be filled by their existing data collection

efforts. These knowledge gaps could pertain to populations who have had direct contact with the welfare system as well as other low-income populations that may be indirectly affected by welfare reform. Enhancements may focus on issues such as sample size, data collection period, content and depth of data, as well as validity and representativeness of data. Eligible applicants may include both States and counties that have previously received grants from ASPE to study welfare outcomes, as well as those who have not received funding from ASPE previously.

**CLOSING DATE:** The closing date for submitting abstracts under this announcement is June 1, 2000.

**MAILING ADDRESS:** Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690-8794. Requests for forms and administrative questions will be accepted and responded to up to ten (10) working days prior to the closing date.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: <http://aspe.hhs.gov>, under the title "Funding." You may fax your request to the attention of the Grants Officer at (202) 690-6518. Applications may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

#### FOR FURTHER INFORMATION CONTACT:

Grant administrative questions should be directed to the Grants Officer at the address or phone number listed above. Technical/program questions should be directed to Kelleen Kaye, DHHS, ASPE, Room 404E, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201. Telephone: (202) 401-6634. Questions may be faxed to (202) 690-6562 or e-mailed to [kkaye@osaspe.dhhs.gov](mailto:kkaye@osaspe.dhhs.gov). Technical questions will be accepted

and responded to up to ten (10) working days prior to the closing date.

#### SUPPLEMENTARY INFORMATION:

##### Part I

##### *Legislative Authority*

This announcement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under the Department of Health and Human Services Appropriations Act, 2000, by section 1000(a)(4) of the Consolidated Appropriations Act, 2000 (Public Law 106-113).

##### *Eligible Applicants*

For studies of populations having direct contact with the TANF system, ASPE will consider applications only from State agencies that administer TANF programs, and county agencies that administer TANF programs and have total populations greater than 500,000. Additionally, for studies of welfare related outcomes among the low-income population more generally, other State agencies may apply and are encouraged to coordinate and/or consult with the TANF administrative agencies in preparing their proposal and undertaking their research. Consortia of States and counties are also encouraged to apply, as long as their combined total populations exceed 500,000 and a single agency is identified as the lead to handle grant funds and sub-granting. Public or private nonprofit organizations, including universities and other institutions of higher education, may collaborate with States in submitting an application, but the principal grantee will be the State or county. Private for-profit organizations may also apply jointly with States, with the recognition that grant funds may not be paid as profit to any recipient of a grant or subgrant. Eligible applications must build on existing survey data collection or administrative data linking capacity around welfare related outcomes and must propose significant enhancements beyond current efforts. Eligible applicants may include both States and counties that have previously received grants from ASPE to study welfare outcomes, as well as those who have not received funding from ASPE previously.

The Code of Federal Regulations, Title 45, Part 92 defines a State as: "Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include

any public and Indian housing agency under United States Housing Act of 1937.”

#### *Available Funds*

Approximately \$1,000,000 is available from ASPE, in funds appropriated for fiscal year 2000. ASPE anticipates providing approximately four to six awards of between \$150,000 and \$200,000 each. If additional funding becomes available in fiscal years 2000 or 2001, further projects may be funded. Applications for funding under this announcement should describe projects that can be completely carried out with one year of funding at the above anticipated level.

#### *Use of Funds*

No federal funds received as a result of this announcement can be used to purchase computer equipment and no funds may be paid to grantees or subgrantees as profit, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81). Our intent is to sponsor enhancements to data collection efforts, and grant funds awarded may not be used to pay for assistance programs or the provision of services.

Grantees must provide at least five percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. Thus, a project with a total budget of \$200,000 must include a match of at least \$10,000 and would imply a request for Federal funds of no more than \$190,000. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

If a proposed project activity has approved funding support from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed project activity is contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE should be discussed in the budget information submitted as a part of the proposal. In both cases, the contribution that ASPE funds will make to the project should be clearly presented.

#### *Background*

Since January 1993, the number of people receiving federally funded assistance under Title IV-A of the Social Security Act has fallen from 14.1 million to just under 7 million

recipients, a reduction of 51 percent. This decline has occurred in response to several factors, including the Administration's grants of Federal waivers to 43 States, the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), and the strong economy. In response to the demand from the public and policymakers, many studies have been and are currently being carried out to study the circumstances of the large numbers of people who have left welfare or who applied and were formally or informally diverted from welfare.

In fiscal year 1998, ASPE awarded approximately \$2.9 million in grants to state and county TANF agencies to study the outcomes of welfare reform for individuals and families who leave the TANF program and who apply for cash welfare but are never enrolled (“divertees”). Most of the 1998 grants focused on welfare leavers. In fiscal year 1999, ASPE awarded an additional \$2.6 million in grants to state and county agencies to study welfare outcomes, including \$1.8 million in grants for new projects (primarily focusing on welfare applicants and diversion) and \$0.8 million in continuation grants for selected projects funded in 1998. All grants funded in 1998 and 1999 used a combination of administrative and survey data to monitor the economic and general well-being of families applying for, entering, or leaving the TANF program. Earlier grants to states and counties, provided in fiscal years 1996 and 1997, had focused on linking administrative databases in order to study program interactions. In addition, a number of states and localities have funded their own studies of welfare outcomes.

ASPE and the Administration for Children and Families, as well as individual States, have also funded a large number of welfare reform evaluations, including continuations of evaluations that began under waivers and use random assignment to address the effects of alternative welfare reform programs.

Through these various projects, State and local grantees have improved their ability to conduct research on welfare outcomes. Valuable information has been gained about the condition of many low-income families affected by welfare reform. For example, between 50 and 65 percent of single-parent adults leaving TANF were employed in industries covered by unemployment insurance immediately after leaving TANF, according to a review of interim reports from ASPE-funded studies. One year after exit, between 15 and 30

percent of TANF leavers were back on assistance, according to this same review of administrative data studies. Participation rates in Medicaid, food stamps and other government programs varied across the states, but were generally lower than expected. Survey data findings, from the ASPE-funded studies and other state and national projects, provide additional information on such topics as household income, barriers to employment, family and child well-being, and other outcomes that cannot be measured through administrative data alone. Additional information on ASPE funded welfare outcomes studies can be found on the ASPE website at [aspe.hhs.gov/hsp/leavers99/index.htm](http://aspe.hhs.gov/hsp/leavers99/index.htm)

As findings from these studies emerge and form a valuable knowledge base around welfare outcomes, now is an appropriate time to identify the remaining gaps in knowledge and the enhancements in data collection that could help fill these gaps.

#### **Part II. Purpose**

ASPE is committed to using the research funds appropriated by Congress to help States and localities build on what they have learned thus far and enhance their ability to studying welfare outcomes.

The purpose of this announcement is to assist the efforts of States and large counties to implement enhancements to their existing data gathering efforts regarding welfare reform outcomes. These enhancements would help States and/or large counties fill important knowledge gaps regarding welfare outcomes that are difficult to address using their current data. This includes outcomes for families coming in direct contact with the welfare system, as well as the low income population that may be indirectly affected by welfare reform.

An applicant should clearly describe the research questions they propose to answer and their importance for understanding the effects of welfare reform, the existing data collection efforts on which the proposed research will build, their current difficulties in answering the question of interest, and how the enhancements they propose will help them overcome these difficulties. The focus is on expanding the richness and reliability of data available in welfare outcomes research, and proposals focusing primarily on secondary analysis of existing data will not be funded under this announcement.

Priority will be given to those applicants who propose enhancements to ongoing survey data collection efforts. However, applications proposing

enhancements to linked administrative data will be considered, provided they can demonstrate an existing capability to link across data systems and/or over time, and propose significant and innovative improvements beyond their current efforts.

Linking to additional program data or linking over a longer period of time would not be considered an improvement unless the additional information would add an important dimension not currently available in the existing linked data. Examples of such improvements include a) linking to nonprogrammatic administrative data systems, such as school records, whose primary focus would be broader than program participation and would help provide information on other household members; and b) linking administrative records over time in a way that allows the tracking of family characteristics and outcomes through multiple benefit situations, e.g. prior to welfare receipt, during receipt, and after exiting.

There is a great degree of variation in State programs, in the scope of State data collection efforts, the knowledge gaps identified, and the enhancements States propose to fill those gaps. Examples of possible knowledge gaps and several associated enhancements are highlighted below. These examples are illustrative. Applicants may focus on other knowledge gaps and enhancements. Enhancements may address issues such as sample size, data collection period, content and depth of data, as well as validity and representativeness of data.

- *How are former recipients who are neither employed nor receiving benefits faring?* These former recipients are likely to be more transient than other welfare leavers. Research around their outcomes could benefit from using methods to track them more effectively and from developing outcome measures that better capture their well-being when there are no visible means of income. Outcome measures that cover the entire household will be particularly important for this population, given that many may have moved in with other household members, doubling up or cohabiting.

- *What can we learn about the well-being and experiences of low-income families who choose not to participate in welfare?* In many cases, the influences of welfare reform reach beyond welfare recipients to the low-income population more generally. More information is needed about why many potentially eligible families choose not to participate, whether they have had any contact with the welfare system, and how they are faring. To

better understand this population, efforts are needed that build on data sources covering more than welfare recipients.

- *Do survey nonrespondents tend to differ on important outcomes, and what do their characteristics imply for the representativeness of existing survey results on welfare outcomes?*

Nonrespondents are comprised of those who decline to answer the survey, as well as those who could not be located. In some cases, those who could not be located can represent a unique population facing particularly difficult circumstances, and not including them in the sample can bias the findings on welfare outcomes. To find nonrespondents and better understand their outcomes and characteristics, it is often necessary to implement intensive location and follow-up procedures.

- *How do outcomes differ among various subgroups within the population being analyzed?* Our understanding of subgroup differences could benefit from analysis that not only contrasts by demographic characteristics (e.g. ethnic minorities, people with disabilities, families with children of differing ages, immigrants, rural vs. urban residents, substance abusers), but also by different types of cases (e.g. among leavers, an applicant could propose to contrast closures due to earnings, sanctions and time limits). Subgroup analysis would need data that identifies the characteristic of interest, and that contains a sufficient number of observations within each subgroup.

- *How do welfare related outcomes change over time?* To improve measures of longitudinal outcomes, more waves could be added to existing survey data to follow a current cohort over a longer period of time, or administrative data could be linked longitudinally to follow clients through multiple benefit situations.

- *Can improvements be made to measures that focus beyond the principal respondent and cover the household more broadly?* For example, measures of household income could be improved by including data that can be summed across individuals and across income sources to better approximate total household income. Measures of child outcomes could be improved by providing better measures of instability inside and outside the family and covering a more detailed set of outcomes, such as school outcomes, cognitive development, social behaviors/activities/problems, mental health, and the extent of resident and non-resident parent involvement. Monitoring changes in household composition could also be an important

aspect of assessing welfare outcomes for the household.

Applicants are free to identify other knowledge gaps which they believe could be better addressed through enhancements to their existing data collection efforts. Regardless of the knowledge gap being addressed or the enhancement being implemented, an applicant proposing to improve research around welfare related outcomes should consider not only the richness, but also the representativeness and validity of the survey and/or linked administrative data they will use.

### Part III. Grantee Responsibilities

1. No later than ten (10) months after the date of the award, the grantee shall plan to meet in Washington DC with Federal staff to present and discuss preliminary findings, their plan for the final report, and their efforts to produce and document a public use data file or other efforts to make the resulting data publically available.

2. After completing the analysis, the grantee shall prepare a final report describing the results of the study, including the procedures and methodology used to conduct the analysis, their findings as they relate to the research questions being proposed, and any barriers encountered in completing the project. A draft of this report shall be delivered to the Federal Project Officer no later than thirty (30) days before the completion of the project. After receiving comments on the draft report from the Federal Project Officer, the grantee shall deliver at least three (3) copies of a final report to the Grants Officer before the completion of the project. One of these copies must be unbound, suitable for photocopying; if only one is the original (has the original signature, is attached to a cover letter, etc.), it should not be this copy.

3. To encourage wider analysis, the grantee shall document and make available all data to the research community. ASPE prefers that this result in a public-use data file. In preparing the public-use data file, data shall be edited as appropriate to ensure confidentiality of individuals. The data file and documentation shall be delivered to the Federal Project Officer prior to completion of the project. If the applicant feels that provision of a public-use data file is impossible, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers and to ASPE by other means. In either case, the grantee shall the plan for data dissemination will be evaluated and scored during the evaluation of proposals.

4. To encourage dissemination of their findings, the grantee shall present their results at one national or regional research conference of their choosing during the year. The grantee shall submit and discuss with the Federal Project Officer any materials they plan to present two weeks prior to the conference.

#### Part IV. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, the forms necessary for submission, and the evaluation criteria under which the applications will be reviewed. Potential grant applicants should read this section carefully in conjunction with the information provided above.

##### Application Preparation

The application must contain the required Federal forms, title page, table of contents, and sections listed below. The narrative shall not exceed 25 single spaced pages and all pages of the narrative should be numbered. Applications from States and counties that received funding from ASPE under the FY 1998 or 1999 welfare outcomes grants are not precluded from submitting proposals under this announcement, provided they are proposing meaningful enhancements to their current efforts data collection efforts. However, such proposals will be graded only on the Evaluation Criteria listed below and will receive no preferential treatment during the award process.

The narrative should include the following elements:

1. *Abstract*: A one page summary of the proposed project.
2. *Goals and objectives of the project*: An overview that briefly describes (1) the specific knowledge gaps to be investigated by the applicant and their importance to welfare reform; (2) how the proposed enhancements would fill these knowledge gaps in a way that could not be done using existing data. The narrative should describe how funding under this announcement will enhance, not substitute for, existing State or local efforts.
3. *Research Design*: Provide a description and justification of how the proposed research project will be implemented, including definition of study populations, use of existing data sources, data collection activities, methodologies and the type of results that are anticipated. This discussion should:

(a) Provide a concise description of any existing research efforts on which

the proposed project will build. Lengthy documentation is unnecessary, but the discussion should provide enough detail to (1) Demonstrate an existing capacity regarding survey and/or linked administrative data collection efforts with respect to welfare outcomes or low income populations, including a description of the population and data period covered and any outcomes measures that are relevant to the proposal; and (2) describe, in terms of the richness, representativeness and/or validity of the data, why the current effort cannot fully answer the research questions posed above. The applicant should clearly identify how the study population is defined. To the extent they are focusing on recipients leaving TANF, applicants are strongly encouraged to use the "leaving cash assistance for two months or longer" definition, agreed to by the earlier ASPE-funded grantees.

(b) Describe in detail the data enhancement being proposed with respect to collection of welfare outcomes data, how it would build on the existing data collection efforts to answer the research questions proposed in the application, and how such enhancements to data collection would be implemented. The applicant should discuss the extent to which the enhancement will improve their existing data on welfare related outcomes, including any proposed changes in population, additional data sources, additional outcomes, and how the enhancements will improve data validity and/or representativeness. With respect to existing and proposed survey data, this should include a discussion of sample design, sample size, survey mode and response rates. With respect to existing and proposed linked administrative data, this should include a discussion of what data systems are linked, how the records were matched, what match rate was achieved and any internal validity checks. We encourage applicants to consider using probabilistic matching, which examines several variables and then factors in the probability that two records with different identifiers actually represent the same person.

(c) Identify the methodology the applicant will use to analyze the data and organize the final report. Complex data analysis is neither expected nor preferred. Simple tabular analysis, descriptive statistics and associated tests for statistical significance are appropriate. The description should include specific analyses and tabulations planned, how the results will be presented, and organization of the report. Final results should include

a tabulation showing the characteristics of sample members who are not included in the analysis, either due to nonresponse in survey data or due to records that cannot be matched in administrative data, and should discuss any implications regarding the representativeness of their data.

(d) To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several State agencies, the proposal should discuss measures taken to maintain confidentiality. Grant applicants must ensure that the collected data will only be used for management and research purposes, and that all identifying information will be kept completely confidential, and should present the methods that will be used to ensure confidentiality of records and information once data are made publically available for research purposes.

4. *Experience, capacity, qualifications, and use of staff*: Briefly describe the grant applicant's organizational capabilities and experience in conducting pertinent research projects.

(a) The proposal should describe in detail the applicant's and/or key subcontractors' experience with issues regarding the collection and use of survey data and linking administrative data to the extent these are relevant to the proposal. If the grant applicant plans to contract for any of the work (e.g., data-linking, survey design or administration), and the contractors have not been retained, the applicant should describe the process by which they will be selected.

(b) The applicant should identify the key staff who are expected to carry out the project, provide as an attachment a resume or curriculum vitae for each key staff member, and provide a discussion of how key staff will contribute to the success of the project, including the percentage of each staff member's time that will be devoted to the project and their relevant expertise.

(c) Finally, applicants should include, in an attachment, documentation showing authorized access to data proposed for the project and to computer hardware and software for storing and analyzing the data. As proof of access to data, it is preferred that applicants provide a signed interagency agreement with each of the relevant agencies/departments. Though not preferable, letters of support from the appropriate agencies are acceptable, provided that the letter clearly states that the proposing agency has the authorization to access and link all necessary data.

5. *Work plan:* A work plan should discuss the start and end dates of the project, a time line which indicates the sequence and timing of tasks necessary for the completion of the project, the responsibilities of each of the key staff, and any interaction with tasks of the existing research effort. In listing the sequence of tasks, the plan should provide sufficient detail to demonstrate the applicant has carefully thought through the necessary steps to complete the project. The plan should identify the total time commitments of key staff members in both absolute and percentage terms, including other projects and teaching or managerial responsibilities.

The work plan also should include plans for dissemination of the results of the study (*e.g.*, articles in journals, presentations to State legislatures or at conferences). As noted above, ASPE prefers that the data be edited as appropriate for confidentiality and issued as a public-use data file. The work plan should detail how resulting data and analysis will be made available to qualified researchers and to ASPE. If the grant applicant believes that provision of a public-use file would be impossible, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers and to ASPE.

6. *Budget:* Grant applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included that states clearly how the funds associated with this announcement will be used and demonstrates that funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should also discuss how these funds will fit into a total budget that combines funding from other sources, and how funds from other sources will be expended.

All applicants must budget for two trips. One trip should be budgeted for up to three staff members to travel to Washington, DC. At this meeting, grantees will have the opportunity to present their preliminary findings and discuss the format of their final report with Federal staff. A second trip should be budgeted for one staff member to travel to a national or regional research conference of their choosing to present their research findings.

#### *Review Process and Funding Information*

Applications will be screened initially for compliance with the timeliness and

completeness requirements. Three (3) copies of each application are required. One of these copies must be in an unbound format, suitable for copying. If only one of the copies is the original (*i.e.*, carries the original signature and is accompanied by a cover letter) it should not be this copy. Applicants are encouraged to send an additional four (4) copies to ease processing, but the application will not be penalized if these extra copies are not included. The grant applicant's Standard Form 424 must be signed by a representative of the applicant who is authorized to act with full authority on behalf of the applicant.

A Federal review panel will review and score all applications submitted by the deadline date that meet the screening criteria (all information and documents as required by this announcement.) The panel will use the evaluation criteria listed below to score each application. The panel results will be the primary element used by the ASPE when making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure. These comments, along with the goal of funding research on a variety of topics, may be considered in making an award decision.

As a result of this competition, approximately four to six grants of \$150,000 to \$200,000 each are expected to be made from funds appropriated for fiscal year 2000. Additional awards may be made depending on the policy relevance of proposals received and the available funding, including funds that may become available in fiscal years 2000 or 2001.

#### *State Single Point of Contact (E.O. No. 12372)*

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

#### *Deadline for Submission of Applications*

The closing date for submission of applications under this announcement is June 1, 2000. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, during the working hours of 9 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located

at 200 Independence Avenue, SW in Washington, DC. When hand-delivering an application, call (202) 690-8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before June 1, 2000, or postmarked before midnight three days prior to June 1, 2000 and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from the U.S. Postal Service or from a commercial carrier (such as UPS, Federal Express, etc.) as proof of mailing by the deadline. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline. If proof cannot be provided, the application will not be considered for funding. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to: (1) Natural disasters, such as floods, hurricanes, or earthquakes; (2) a widespread disruption of the mail; or, (3) if DHHS determines a deadline extension to be in the best interest of the Federal government. The Department will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

#### *Length of Application*

In no case shall an application for the ASPE grant (excluding the resumes, appendices and other appropriate attachments) be longer than twenty-five (25) single-spaced pages, with 12 point font and one inch margins on top, bottom, right and left. Applications should not be unduly elaborate, but should fully communicate the applicant's proposal to the reviewers.

#### *Selection Process and Evaluation Criteria*

Selection of successful applicants will be based on the technical and financial criteria described in this announcement. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, grant

applicants should take care to ensure that all criteria are fully addressed in the applications. Grant applications will be reviewed as follows:

1. *Goals, Objectives, and Potential Usefulness of the Analyses* (25 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will fill critical gaps in knowledge around welfare related outcomes that cannot be answered with existing data. Applications will be judged on the quality and policy relevance of the proposed research questions, appropriateness of study populations, and the usefulness of the analyses.

2. *Quality and Soundness of Research Design* (35 points). The appropriateness, soundness, and cost-effectiveness of the proposed research design, including data gathering techniques, selection of existing data sets, definition of study populations, statistical techniques and type of results that are anticipated. In particular, the applicant should address the following, as described under the section on Application Preparation.

(a) The applicant must describe the existing survey and/or linked administrative data effort around welfare outcomes or the low-income population on which the proposed enhancements will build, including a description of why the current effort cannot fully answer the research questions posed above.

(b) The applicant should describe in detail the data enhancement being proposed with respect to welfare outcomes research, how it would build on the existing data collection efforts to answer the research questions proposed in the application, and how such enhancements to data collection would be implemented. There is a preference for enhancements to survey data, but enhancements to linked administrative data that are significant and innovative will be considered.

(c) The applicant should also describe their proposed data analysis, including the proposed tabulations and table shells and the planned organization of the final report. Applicant should plan to include in their final results a tabulation showing the basic characteristics of sample members who were not included in the final analysis, including any available outcome measures, and should discuss any implications regarding the representativeness of their data.

(d) To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several State agencies, the reviewers will also evaluate whether the applicant has adequately discussed

measures taken to maintain confidentiality.

3. *Qualifications of Personnel and Organizational Capability*. (20 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. This should include providing resumes or curriculum vitae for key staff members and demonstrating access to data, computer hardware to store the data and software to analyze the data, as described above under Application Preparation.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives*. (20 points). Reviewers will examine (a) if the work plan and budget are reasonable and sufficient to ensure timely completion of the study; (b) whether the application demonstrates an adequate level of understanding regarding the practical problems of conducting such a project; (c) the use of any additional funding and the role that ASPE funds would play in the total project; (d) whether the applicant has shown how results will be disseminated and resulting data will be made available to ASPE and qualified researchers. The preparation and documentation of a public use data file, or other efforts to make the resulting data publically available should be accounted for in the project budget.

#### Disposition of Applications

1. *Approval, disapproval, or deferral*. On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition*. The Grant Officer will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion*. Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards are contingent on the needs of the policy and research communities as identified by the Department at any point in time, and on the quality of the applications that are received.

The Catalog of Federal Domestic Assistance number is 93-239.

#### Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard Form 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement, organized in five sections, addressing the following topics (limited to twenty (25) single-spaced pages):
  - (a) Abstract,
  - (b) Goals, Objectives and Usefulness of the Project,
  - (c) Research Design,
  - (d) Background of the Personnel and Organizational Capabilities and
  - (e) Work plan (timetable);
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: April 10, 2000.

**Ann M. Segal,**

*Deputy Assistant Secretary for Planning and Evaluation for Policy Initiatives.*

[FR Doc. 00-9419 Filed 4-14-00; 8:45 am]

BILLING CODE 4154-05-U

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Office of the Secretary

##### Office of the Assistant Secretary for Planning and Evaluation; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Planning and Evaluation all authorities under Section 2108(c) of Title XXI of the Social Security Act, titled "Federal Evaluation of State Children's Health Insurance Program," as amended hereafter. These authorities shall be implemented in consultation with the Health Care Financing Administration, the Health Resources and Services

Administration, and other relevant components within the Department.

These delegations shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby affirm and ratify any actions taken by you or your subordinates that involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective immediately.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00-9420 Filed 4-14-00; 8:45 am]

BILLING CODE 4150-04-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 00089]

#### Health Promotion and Disease Prevention Research Center Cooperative Agreement; Notice of Availability of Funds

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to fund a Health Promotion and Disease Prevention Research Center (PRC) at the University of Kentucky. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Educational and Community-Based Programs. For the conference copy of "Healthy People 2010", visit the internet site <http://www.health.gov/healthypeople>. The purpose of the program is to support health promotion and disease prevention research that focuses on the major causes of death and disability and promote health practices that lead to more effective State and local programs.

**Note:** Background and CDC program objectives are provided in Attachment 1.

##### B. Eligible Applicants

Assistance will be provided only to the University of Kentucky, School of Medicine. No other applications are solicited.

##### C. Availability of Funds

Approximately \$525,000 is available in FY 2000 to fund a Health Promotion and Disease Prevention Research Center in Kentucky. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### Direct Assistance

You may request Federal personnel, equipment, or supplies as direct assistance, in lieu of a portion of financial assistance (see Application Content).

##### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities).

##### 1. Recipient Activities

a. Select a research theme that will serve as a focus for Prevention Research activities for Appalachia.

b. Develop the administrative structure and recruit staff to implement a Prevention Research Center plan.

c. Conduct and evaluate a demonstration project in health promotion and disease prevention or preventive health services, within a defined community or special population. The project must reflect the needs of the community within the applicant's jurisdiction and show evidence of having used an appropriate planning process in determining project selection. Consistent with the discussion in the Background and CDC Program Objectives (See Attachment 1), the project should specify how the research project will heighten public health practice and advance research translation.

d. Establish an advisory committee to provide input on the major program activities. Membership may include but is not limited to a variety of local health-care providers, health and education agency officials, community leaders and organizers, and representatives of local businesses, churches, voluntary organizations, and consumers.

e. Establish collaborative activities with appropriate organizations, individuals, and State and local health departments.

f. Conduct applied community-based training in research methods to foster community involvement and build community capacity for participatory research. If appropriate, this training may include a distance-learning-based format.

g. Establish the capacity to implement and evaluate multi disciplinary, professional training programs in prevention research.

h. Establish a plan to ensure translation of results to appropriate constituencies.

##### 2. CDC Activities

a. Collaborate as appropriate with the recipient in all stages of the project.

b. Provide programmatic and technical assistance.

c. Participate in improving program performance through consultation based on information and activities of other projects.

d. Provide scientific collaboration with grantee as necessary to meet program goals and objectives.

e. At the request of the applicant, assist with developing the curriculum, training, or conducting other specific necessary activities.

##### E. Application Content

##### Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative must not exceed 90 double-spaced pages, printed on one side, with one inch margins, and 12" font, excluding appendixes and PHS Form 398. Appendixes must not exceed 25 pages and must be hard copy documents (*i.e.*, no audiovisual materials, posters, etc.).

##### 1. Research Theme

Identify a research theme and describe activities designed to focus on the theme that will result in innovative approaches to prevention research. Clearly identify the need of the partner community in Appalachia, and describe the PRC's experience working with communities on the identified research theme. The applicant may wish to refer to products from the Task Force Community Preventive Services when considering their research theme. (For detailed information, visit the *Guide to Community Preventive Services* on the Web at <http://web.health.gov/communityguide>). Examples of research themes from current Research Prevention Centers include:

- a. Bridging the Gap Between Public Health Science and Practice in Underserved Populations.
- b. Promoting the Health of Multiethnic Communities of the Southwest.
- c. Putting Health Promotion into Action Community Collaboration.
- d. Reduction of Excess Morbidity and Mortality in the Harlem Community.
- e. Promoting Healthy Behavior and Disease Prevention in Native American Populations.

## 2. Prevention Research Center Plan

Submit a plan for a prevention research center serving Appalachia with clear goals, objectives, and activities, to include:

- a. A description of goals and objectives for the budget period that are consistent with the research theme. Objectives should be specific, measurable, attainable, realistic and time-phased (SMART MODEL for objectives).

- b. A description of the scope, methods of operation, evaluation, and a timeline for implementation.

- c. A description of the use of other federal funds that will impact on stated program objectives.

- d. A description of any financial and in-kind contributions from nonfederal sources.

- e. Documentation describing the composition, membership, rationale for membership, and objectives for a Community Advisory Committee. Documentation of how the Advisory Committee will facilitate collaboration with community organizations, State and local health or education departments.

- f. A description of plans for conducting community-based applied training.

- g. A description of capacity to provide prevention research training for professionals.

- h. Documentation of commitment to minority and underserved populations, or other defined populations or communities.

- i. A description of significant factors which may favorably or adversely impact on program performance.

## 3. Management and Staffing Plan

Provide a management plan that includes a description of all organizational units and functions in the PRC. The plan should reflect the ability of the PRC to carry out the chosen research theme. Describe how the applicant will integrate the PRC within the parent institution. The following areas should be considered in developing a management and staffing plan:

- a. Describe the PRCs personnel infrastructure.

- b. Describe how proposed staffing will support center activity. Current resumes must be included.

- c. Describe how the proposed staff meet the goal of establishing multidisciplinary prevention research centers.

- d. No less than two full-time positions (FTE's) must be allocated for the following functions: (Percentages of an FTE may be used for several positions.)

- (1) Scientific oversight: Accountable for center research and development, design, methodology, project evaluation, and publications.

- (2) Community Development: Community liaison, advisory committee, community training activities, and community dissemination.

- (3) Program and Project Management: Oversight of center supported research and Institutional Review Board (IRB) protocols, coordination of center studies, mentorship of junior investigators, dissemination activities, and professional training in prevention research.

- (4) Center Administration: Responsible for communication with CDC's Prevention Research Centers Program staff and Procurement and Grants Office. Responsibilities will include submission of fiscal reports, fiscal tracking and reports, personnel, and center procurement.

## 4. Research Project

Submit a description of a research project that is consistent with the CDC PRC Program objectives and selected PRC theme. The narrative for specific project should contain:

- a. A description of the research project including goals, objectives, timeline, research questions and target population.

- b. A description of the research methods including methods for participant recruitment, data collection, evaluation design, and data analysis.

- c. A description of the extent of community and other research collaborations in the proposed project.

- d. A description of project staff (number and types of positions).

- e. A project budget.

- f. A description of the plans to translate research findings into public health practice or policy.

- g. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

## 5. Evaluation Plan

Describe and plan a methodology to evaluate PRC program and activities

with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRCs community-based objectives; and any other indicators, such as cost-benefit analyses. Specify staff responsible for the plan and their background and experience in evaluation research.

## 6. Budget Information

Provide a line-item budget and narrative justification for all requested costs that are consistent with the goals, objectives, and proposed research activities, to include:

- a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.

- b. Line-item breakdown and justification for all contracts and consultants, to include:

- (1) Name of contractor or consultant
- (2) Period of performance
- (3) Method of selection (e.g., competitive or sole source)

- (4) Scope of work
- (5) Method of accountability
- (6) Itemized budget

- c. Requests for direct assistance in the form of field assignees must also include the following:

- (1) The number of assignees requested.

- (2) A description of the position and proposed duties for each assignee.

- (3) Justification for request.

- (4) An organizational chart and the name of the intended supervisor.

- (5) The availability of career-enhancing training, education, and research experience opportunities for the assignee(s).

- (6) Assignee access to computer equipment for electronic communication between CDC headquarter's office and PRC.

- d. A brief three-year budget projection should be submitted that clearly separates and distinguishes direct from indirect costs.

## F. Submission and Deadline

Submit the original and five copies of the application PHS Form 398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: [www.cdc.gov/](http://www.cdc.gov/) . . . *Forms*, or in the application kit. The application must be submitted on or before June 15, 2000. Submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* The application shall be considered as meeting the deadline above if it is either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date. (Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

### G. Evaluation Criteria

An external peer review panel will review the application using the following criteria:

(1) PRC Theme; (2) Center Plan; (3) Management and Staffing Plan; (4) Research Project; and (5) Evaluation. The Budget and Human Subjects sections are reviewed but not scored. The review panel will score the application overall, based on a 1–5 scale (with increments of 0.1) with 1=highest (best) and 5=lowest. The reviewers' scores are then averaged and multiplied by 100 to attain a priority score for the application. The review panel will also compile a summary and recommendations including the strengths and weaknesses of the application.

#### 1. PRC Theme

To what extent does the research theme meet health priorities and emerging public health needs of identified communities or special groups?

#### 2. Center Plan

(a) To what extent does the plan have objectives that are clear, specific, measurable, attainable, realistic and time-phased?

(b) Does the plan make effective use of both PRC and community resources to advance the PRC theme?

(c) Is the plan consistent with the PRC purpose, and does it include a three-year timeline?

(d) Does the plan describe the composition of a Community Advisory Committee and rationale for its membership, relevance and feasibility of committee objectives and its role within the PRC?

(e) Is a plan included to establish collaborative activities with appropriate organizations, individuals, State, and local health departments?

(f) Is a plan included to conduct community-based training in research methods to foster community involvement and build community capacity for participatory research?

(g) Does the plan contain a description of the Center's capacity for

providing professional, multidisciplinary prevention research training in the area of health promotion and disease prevention?

#### 3. Management and Staffing Plan

To what extent does the applicant demonstrate the ability, capacity, organizational structure, and staffing to carry out the overall theme, objectives, and specific project plans?

#### 4. Research Project

(a) Does the applicant demonstrate an understanding of the community contexts, current scientific literature, as well as other information sources relevant to the proposed project?

(b) Are the conceptual framework, design, methods, analyses, and translation plan adequately developed, well-integrated, scientifically strong, and appropriate to the aims of the project?

(c) Does the proposed approach allow for flexibility or change in research methods or focus as necessary?

(d) Does the applicant acknowledge potential problem areas and consider alternative tactics?

(e) Is there an appropriate work plan included?

(f) Does the project include plans to measure progress toward achieving the stated objectives?

(g) Does the applicant propose research translation approaches or methods for findings from the project?

(h) The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

#### 5. Evaluation

To what extent are the plan and methodology proposed to evaluate the PRC program and activities with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRCs community-based objectives; and any other indicators, such as cost-benefit analyses feasible and of scientific merit?

#### 6. Budget (Reviewed But Not Scored)

The extent to which the budget and justification are consistent with the program objectives and purpose.

#### 7. Human Subjects (Reviewed But Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

### H. Other Requirements

#### Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. progress reports (annual);
2. financial status report, not more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 2 in the application kit.

- AR-1 Human Subjects Requirements
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR-7 Executive Order 12372 Review
- AR-8 Public Health System Reporting Requirements
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions

### I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) and 1706 [42 U. S. C. 241(a), 247b(k)(2) and 300 u-5] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.135.

### J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management/technical assistance may be obtained from: Robert

Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA30341-4146 telephone (770) 488-2746, E-mail address: RNH2@cdc.gov

For program technical assistance, contact: Lynda Doll, Ph.D., Program Director, Prevention Research Centers Office, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Atlanta, GA 30341-3724, telephone 404-488-5395, E-mail address: LSD1@cdc.gov

Dated: April 11, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office.*  
[FR Doc. 00-9455 Filed 4-14-00; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: HRSA Competing Training Grant Application, Instructions and Relating Regulations (OMB No. 0915-0060)—Revision**

The Health Resources and Services Administration uses the information in the application to determine the

eligibility of applicants for awards, to calculate the amount of each award and to judge the relative merit of applications. The form is distributed electronically via the Internet. The budget is negotiated for all years of the project period based on this application and program-specific instructions that include greater standardization of content for the project summary and the detailed description of the project.

The Bureau of Health Professions is planning to remove from the Code of Federal Regulations the existing training grant regulations under 42 CFR parts 57 and 58. It is the intent of the Department to operate under new statute for compliance, implementation, and administration of the training grant programs under titles VII and VIII of the PHS Act. The existing regulations are fundamentally and extensively inconsistent with the new law which takes an interdisciplinary approach (and thus inhibits the achievement of the statute's objectives). Program specific guidance and information for preparing applications are now provided in the grant application materials (which makes them now self-contained).

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report .....	1,250	1	1,250	56.25	70,313

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 7, 2000.

**Jane Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00-9401 Filed 4-14-00; 8:45 am]

**BILLING CODE 4160-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Cancer Institute (NCI) and the NIH Center for Information Technology (CIT): Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Software Enhancement for Expanding the Medical Uses of the TELESYNERGY™ Medical Consultation Workstation**

**AGENCY:** National Institutes of Health, PHS, DHHS.  
**ACTION:** Notice.

**SUMMARY:** The National Cancer Institute (NCI) and the Center for Information Technology (CIT) seek a Cooperative Research and Development Agreement (CRADA) Collaborator to provide programming and systems integration support to NCI for the further development and commercialization of the TELESYNERGY™ Medical Consultation WorkStation.

Over the past six years, the Center for Information Technology at the National

Institutes of Health has developed TELESYNERGY™, a multimedia medical imaging and personal interaction infrastructure within an electronic imaging environment, to facilitate professional collaboration and education concerning cancer research protocols and clinical cancer care. TELESYNERGY™ has been designed to provide for the simultaneous high-resolution display of images from numerous medical modalities, in both real-time and store-and-forward modes, as well as for the simultaneous interaction of medical experts and other research professionals. One example of implementation of TELESYNERGY™ is underway within the Radiation Oncology Branch (ROB) in the National Cancer Institute. ROB's initial applications are in the areas of research participation in radiotherapy planning and treatment, and the related subsequent clinical and research interactions and collaborations as a result.

Potential areas of application for the TELESYNERGY™ platform include oncology, general medicine, family practice, and specialties such as OB/

GYN, cardiology, nuclear medicine, radiology, otolaryngology, ophthalmology, dermatology, urology, cytogenetics and pathology. Further development of this system will ultimately bring expanded participation in NCI clinical research and eventual improvement in clinical care to urban and rural health care systems both nationally and internationally.

**DATES:** Interested parties should notify the Technology Development and Commercialization Branch of the NCI in writing of their interest in filing a formal proposal no later than thirty (30) days from the date of this announcement. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

**ADDRESSES:** Inquiries and proposals regarding this opportunity should be addressed to Stephanie Amoroso, Ph.D., Technology Development Specialist (Tel. #301-496-0477, FAX #301-402-2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852.

**SUPPLEMENTARY INFORMATION:** A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI and the CIT pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. The NCI and CIT are looking for a collaborator to further develop and integrate systems for the TELESYNERGY™ program. The proposed term of the CRADA can be up to five (5) years.

The TELESYNERGY™ system functions by transporting audio and video data streams continuously through a 155 Mbits/sec ATM and/or ISDN line link connecting the NCI and national and international sites. Microphones and speakers allow bi-directional voice communication, and video capability is provided with S-Video cameras and monitors. As stated above, if ATM capability is not available or is too expensive at a remote site, a 1.5 Mbits/sec ISDN PRI telephone circuit can be utilized for connectivity, with only very minimal degradation in audio and video quality.

Two high-resolution monochrome image display systems each function as an Electronic View Box (EVB) for the display of 14 x 17 inch format digitized "electronic films." Utilizing the EVBs, discussion, diagnosis, or organ and

lesion contouring can be performed via a shared-cursor technique in consultation mode, which allows the oncologists to collaborate in identifying features. These identified regions-of-interest are transmitted simultaneously and in real-time as is audio during the TELESYNERGY™ consultation session.

A remote-controlled microscope capability allows biopsy specimens to be discussed and manipulated by a number of sites concurrently. In addition, a patient exam camera allows high-resolution viewing of patient exams, including identification of dermatological lesions, skin coloration, and other physical characteristics during a patient examination.

TELESYNERGY™ also included a mechanism to allow remote consultations and education between geographically distributed medical specialists of all types. Pairing the TELESYNERGY™ system with the NCI's Net-Trials™ Clinical Trials Information System will allow Phase I and Phase II research trials to be conducted "beyond the NIH campus." Patient protocol data may then be directly entered into the NCI's Net-Trials™™ research database from the offsite location.

NCI and the CIT are seeking a CRADA partner to collaborate with them in the further development, commercialization, education, installation and maintenance of the TELESYNERGY™ Medical Consultation WorkStation. The CRADA, with the intellectual assistance of NCI and CIT, would provide systems development and integration of TELESYNERGY™ for the applications mentioned above.

#### References

1. Kempner KM, Chow D, Choyke P, Cox JR Jr., Elson JE, Johnson CA, Okunieff P, Ostrow H, Pfeifer JC, and Martino RL: The development of an ATM-based Radiology Consultation WorkStation for radiotherapy treatment planning. Medical Imaging 1997 Conference Proceedings, Volume 3031, Paper 49, published by the Society of Photo-Optical Instrumentation Engineers, Inc., Bellingham, WA, 1997.
2. Govern FS, Coleman CN: Ethical Challenges in the Era of Healthcare Reform: A View from Academic Oncology. J. Oncol Management, Sept./Oct., 4:20-26, 1995.
3. Linggood R, Govern FS, Coleman CN, and et al: Report from the Field: A Blueprint for Linking Academic Oncology and the Community: The Harvard Joint Center for Radiation Therapy Outreach Program. J. Health Politics, Policy and Law, Vol. 23, No. 6, Dec. 1998.

Under the present proposal, the overall goal of the CRADA collaboration will involve the following:

1. To expand and enhance upon the current technology and its usage as developed by CIT and the NCI regarding the TELESYNERGY™ Medical Consultation WorkStation.

2. To provide programming support for the broad commercialization/dissemination and enhancement into other medical disciplines of the TELESYNERGY™ system.

3. To develop a distribution and service plan for the TELESYNERGY™ system.

#### Party Contributions

The role of the NCI/CIT in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.

2. Providing the CRADA Collaborator with information and data relating to the current methods implemented for the applications of TELESYNERGY™.

3. Publishing research results.

4. Development additional potential clinical applications for the TELESYNERGY™ system.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.

2. Providing programming support for writing novel software, and technical support for writing system manuals.

3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.

4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not limited to:

1. A demonstrated record of success in the development and dissemination of medical software.

2. A demonstrated background and expertise in ATM-ISDN based technology.

3. The ability to collaborate with NCI/CIT on further research and development of this technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

4. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

5. The willingness to commit best effort and demonstrated resources to the research and development of this

technology, as outlined in the CRADA Collaborator's proposal.

6. The demonstration of expertise in the commercial development and production of products related to this area of technology.

7. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects and to all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with appropriate modifications pertaining to the software-based technology sought to be developed. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: April 6, 2000.

**Kathleen Sybert,**

*Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.*

[FR Doc. 00-9429 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting John Rembosek, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7056 ext. 270; fax: 301/402-0220; e-mail: jr312d@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

#### Methods and Compositions for Correlating CCR5 Expression With Essential Hypertension

Dr. Thomas O'Brien (NCI)  
DHHS Reference Number E-257-99/0  
filed October 14, 1999

Hypertension is a disease which afflicts as many as 1 in 5 persons in the United States and is the most common cause of visits to physicians. Once diagnosed with hypertension, treatment of the disease is lifelong. There is mounting evidence that lifestyle changes can prevent the usual rise in blood pressure with age, but for patients whose hypertension cannot be adequately treated by lifestyle changes, drug therapy must be instigated which can be difficult to control and have adverse side effects.

The present invention mutation in the CC-chemokine receptor 5 (CCR5) gene and an increased risk of developing hypertension. This technology will allow for the screening of individuals for the presence of the CCR5-D32/D32 genotype which correlates with an increased risk of developing hypertension and possibly prevent its occurrence through adequate antihypertensive therapy.

This technology may lead to a method of treating or preventing hypertension through the administration of: (1) an effective amount of a CCR5 expression enhancing agent; (2) CCR5 activity enhancing agent; (3) an effective amount of CCR5; or (4) an effective amount of a nucleic acid encoding CCR5. Also, this technology can be employed as a method of identifying an agent that could be used to treat or prevent hypertension through the above identified processes.

#### Cloning of the Human Nuclear Receptor Co-Repressor Gene

Johnson M. Liu, Jianxiang Wang  
(NHLBI)  
DHHS Reference No. E-088-99/0 filed  
August 3, 1999

Alteration in the expression of human genes is critical to the development and progression of many diseases. These

include, among others, cancer, inflammation, cardiovascular disease, hypercholesterolemia, high blood pressure, and diabetes. The Human Nuclear Receptor Co-Repressor (HuN-Cor) gene represents a technology that may be used to alter the transcription of genes. It provides a general mechanism by which many genes may be modulated throughout the entire range of being turned on to being completely turned off. The Hun-Cor gene is a ubiquitously expressed gene that codes for a protein that silences other genes. It does this by recruiting an enzyme complex that causes local folding of chromatin, not allowing other transcription factors to work. Hun-Cor represents a powerful research tool that can be used to study gene expression and characterization for many different genes. It may also be useful as a target for the isolation of pharmaceutical compounds that enhance or inhibit expression of genes.

Dated: April 7, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00-9430 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Uri Reichman, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7736 ext. 240; fax: 301/402-0220; e-mail: ur7A@nih.gov. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

### Imaging With Positron-Emitting Taxanes as a Guide to Antitumor Therapy

Jerry M. Collins, Raymond W. Klecker, Lawrence Anderson (FDA)  
Serial No. 60/155,061 filed 21 Sep 1999

The present application discloses the use of positron-emitting compounds to label taxane type drugs. This invention also describes methods of synthesizing these taxane type compounds. Further, methods to guide treatment of solid tumors, with labeled taxanes, are also disclosed in the present application. Advantages of using this technology include: (1) Avoidance of exposing patients to toxic drugs that have no potential for benefit; (2) ability to rapidly determine whether a given tumor will be likely to respond to a particular drug; and (3) the ability to monitor the impact of various dosages, schedules, and modulators for delivery, *in situ*, at the actual tumor under treatment conditions.

### Conjugate Vaccine for *Neisseria Meningitidis*

Xin-Xing Gu (NIDCD) and Chao-Ming Tsai (FDA)  
Serial No. 60/148,021 filed 10 Aug 1999

The invention discloses a vaccine which comprises lipooligosaccharide (LOS) isolated from *N. meningitidis* and conjugated to a carrier protein. The invention also discloses a method of making the acellular vaccine. The method consists of two main steps. In the first step the lipooligosaccharide (LOS), chosen so it does not contain the lacto-N-neotetraose human antigen (LNnT), is detoxified by a novel procedure which uses hydrazine to remove the O-linked fatty acids. In the second step, the detoxified LOS (dLOS) is covalently conjugated to a carrier protein such as Tetanus Toxoid (TT). The dLOS produced in step 1 is 10,000 fold less toxic than the parent LOS. The conjugate vaccine exhibited a high level of immunogenicity as evidenced by the high titer of IgG antibody to native LOS, obtained in mice and rabbits. The rabbit antisera produced by the conjugate vaccine of one *N. meningitidis* strain (strain 7880, A,L10) exhibited bactericidal activity and cross reactivity with heterologous *N. meningitidis* strains. A conjugate vaccine made in this method may be multivalent, composed of dLOSs from different strains and/or immunotypes of *N. meningitidis* and will thus protect against all types of *N. meningitidis*, including type B.

A portion of this invention was disclosed in a poster by Tsai, Gu and Quakyi at the Fifth Conference of the International Endotoxin Society held in Santa Fe, New Mexico in September 12-15, 1998.

Dated: April 7, 2000.

#### Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00-9444 Filed 4-14-00; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting John Peter Kim, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7056 ext. 264; fax: 301/402-0220; e-mail: jk141n@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

#### High Speed Parallel Nucleic Acid Sequencing

Thomas D. Schneider, Denise Rubens (NCI)  
Serial No. 60/151,580 filed 30 Aug 1999

The present application describes a new method and apparatus for DNA sequencing called Two Dye Sequencing (TDS). This method employs engineered DNA polymerases which are labeled with a fluorophore such as Green Fluorescent Protein (GFP) and are combined with an annealed oligonucleotide primer in a chamber of a microscope field of view capable of detecting individual molecules. Four

nucleotide triphosphates, each labeled on the base with a different fluorescent dye are introduced to the reaction. Light of a specific wavelength is used to excite the fluorophore on the polymerase, which in turn excites the neighboring fluorophore on the nucleotide by Fluorescence Resonance Energy Transfer (FRET). As nucleotides are added to the primer, their spectral emissions provide sequence information of the DNA molecule.

#### Hydrazide Inhibitors of HIV-1 Integrase

Yves Pommier, Nouri Neamati, Zhaiwai Lin, Terrence R. Burke, Jr. (NCI)  
DHHS Reference Nos. E-037-99/0 filed 12 Mar 1999 and E-037-99/1 filed 10 Mar 2000

The human immunodeficiency virus (HIV) is the causative agent of acquired immunodeficiency syndrome (AIDS). Drug-resistance is a critical factor contributing to the gradual loss of clinical benefit to treatments for HIV infection. Accordingly, combination therapies have further evolved to address the mutating resistance of HIV. However, there has been great concern regarding the apparent growing resistance of HIV strains to current therapies.

It has been found that a certain class of compounds including salicylhydrazides and analogs and derivatives thereof are effective and selective anti-integrase inhibitors which are active in the presence of both Mn(+2) and Mg(+2) and which may be used in the treatment or prevention of infection by HIV and AIDS. The subject invention provides for such compounds and for methods of inhibiting HIV integrase.

Dated: April 5, 2000.

#### Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00-9446 Filed 4-14-00; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### “Conference on Challenges in Health Disparity in the New Millennium: A Call to Action”

Notice is hereby given of the NIH Office of Research on Minority Health (ORMH) Conference on Challenges in Health Disparity in the New Millennium: A Call to Action, which will be held April 16-19, 2000, at the

Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Washington, D. C. 20001. The conference begins at 8:00 a.m. on April 17, 8:00 a.m. on April 18, and 8:30 a.m. on April 19.

The Office of Research on Minority Health (ORMH), Office of the Director, National Institutes of Health (NIH), is convening this conference. ORMH is a central leadership entity at the NIH for issues related to minority health research and research training. Reports of progress and accomplishments since the founding of ORMH in 1990 and developing a strategic plan for future actions for eliminating health research and research training disparities comprise the agenda of the conference.

Specific conference objectives include:

- Recommending a framework for the ORMH to address continuing disparity in health status of the US population and the international community through the Minority Health Strategic Plan;
- Highlighting the role of the ORMH to address disparity in health status through basic and clinical research and research training in biomedical and behavioral sciences; and
- Promoting partnerships with leaders in Congress, associations, academic institutions, industry, community-based organizations, and other Federal agencies to help eliminate health disparity.

The primary sponsor of this conference is ORMH. Advance information on the conference program and conference registration materials maybe obtained from Debra Rainey, LCLM, LLC, Inc., 1299 Lambertson Drive, Suite 205, Silver Spring, Maryland 20902 (telephone: 301-593-2800).

Dated: April 7, 2000.

**Yvonne Maddox,**

*Acting Deputy Director, National Institutes of Health.*

[FR Doc. 00-9445 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Cancer Advisory Panel for

Complementary and Alternative Medicine.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of program documents—PAC and the discussions would likely to significantly frustrate implementation of recommendations.

*Name of Committee:* Cancer Advisory Panel for Complementary and Alternative Medicine.

*Date:* April 19, 2000.

*Time:* 2:30 PM to 5:00 PM.

*Agenda:* To review and evaluate the Gonzalez Regiment.

*Place:* National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Room 5B5B, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Richard Nahin, PhD, Executive Secretary, Cancer Advisory Panel for Complementary, and Alternative Medicine, NCCAM, NIH, 9000 Rockville Pike, Building 31, Room 5B37, Bethesda, MD 20892, 301-594-2013.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: April 6, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9436 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Clinical Scientist Development Awards (K08).

*Date:* April 12, 2000.

*Time:* 2:30 PM to 4 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* C. James Scheirer, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Rockledge Center II, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892-7924, 301-435-0266.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 6, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9434 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Fluorescent Indicator Dyes for Extracellular Ions (SBIR).

*Date:* May 4, 2000.

*Time:* 9:00 AM to 11:00 AM.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6701 Rockledge Drive, Room 4212, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* David T. George, PhD, Review Branch, NIH, NHLBI, DEA, Rockledge II, 6701 Rockledge Drive, Suite 7188, Bethesda, MD 20892-7924, (301) 435-0280.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel SCOR in Transfusion Biology and Medicine.

*Date:* June 8, 2000.

*Time:* 7:30 AM to 6:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Deborah P. Beebe, PhD, Leader, Cardiology/Pulmonary Scientific Review Group, Rockledge Center II, 6701 Rockledge Drive, Suite 7178, Bethesda, MD 20892-7924, (301) 435-0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 7, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9439 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Contract Review—NIH ES 00-24.

*Date:* May 24, 2000.

*Time:* 8:30 AM to 4:30 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC-30, Research Triangle Park, NC 27709, (919) 541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 6, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9432 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* April 14, 2000.

*Time:* 12:00 PM to 2:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* May 24, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Town Center, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 6, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9433 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* May 5, 2000.

*Time:* 8:30 AM to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Gaithersburg, The Washington Room, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

*Contact Person:* Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700-B Rockledge Drive, MSC, 7610, Bethesda, MD 20892-7610, 301-496-2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 7, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9437 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Dental & Craniofacial Research; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, 59-00, Review of R13.

*Date:* April 17, 2000.

*Time:* 1 PM to 3 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* H. George Hausch, PHD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594-2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, 00-39, Review of RO3s.

*Date:* May 2, 2000.

*Time:* 1 PM to 3 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, Md 20892, (Telephone Conference Call).

*Contact Person:* William J. Gartland, PHD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental

Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594-2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, 00-41, Review of F30, K23 and R03s.

*Date:* May 3, 2000.

*Time:* 2 PM to 4 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* William J. Gartland, PHD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594-2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, 00-37, Review of P01s.

*Date:* June 5, 2000.

*Time:* 2 PM to 5 PM.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594-2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, 00-50, P01 Applicant Interview.

*Date:* June 11-12, 2000.

*Time:* 8:30 AM to 5 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594-2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, 00-58, Review of P01.

*Date:* June 14, 2000.

*Time:* 11 AM to 1 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* H. George Hausch, PHD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594-2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel, 00-45, Review/applicant interview, P01.

*Date:* June 18-19, 2000.

*Time:* 9 AM to 5 PM.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Yasaman Shirazi, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594-2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and

Disorders Research, National Institutes of Health, HHS)

Dated: April 7, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9438 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK GRB-C (M2)P.

*Date:* April 24-25, 2000.

*Time:* 7:00 PM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Dan E. Matsumoto, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS37B, National Institutes of Health, Bethesda, MD 20892-6600, (301) 594-8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB-7 (M3)P.

*Date:* May 1-3, 2000.

*Time:* 7:30 PM to 12:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Arkansas Excelsior Hotel, #3 Statehouse Plaza, Little Rock, AR 72201.

*Contact Person:* Lakshmanan Sankaran, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS25F, National Institutes of Health, Bethesda, MD 20892-6600, (301) 594-7799.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.847, Diabetes,

Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 10, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9442 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, VISA (03).

*Date:* April 17, 2000.

*Time:* 1 PM to 4 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435-1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, VISB (03).

*Date:* April 24, 2000.

*Time:* 2 PM to 4 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Leonard Jakubczak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435-1247.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 25, 2000.

*Time:* 8:30 AM to 5 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Hotel & Suites, 625 First Street, Alexandria, VA 22314.

*Contact Person:* H. Mac Stiles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, (301) 435-1785.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 25, 2000.

*Time:* 1 PM to 2 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435-1260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 6, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9435 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 14, 2000, 11:00 AM to April 14, 2000, 1:00 PM, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on April 3, 2000, 65FR17518.

The meeting will be held on April 13, 2000, from 1:00 PM to 3:00 PM. The location remains the same. The meeting is closed to the public.

Dated: April 7, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9440 Filed 4-17-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 14, 2000.

*Time:* 2:00 PM to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892-7854, (301) 435-1175, bakerh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 19, 2000.

*Time:* 2:30 PM to 3:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435-8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 21, 2000.

*Time:* 2:00 PM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carl D. Banner, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435-1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 26, 2000.

*Time:* 1:00 PM to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435-1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 26, 2000.

*Time:* 1:00 to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435-1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 26, 2000.

*Time:* 2:00 to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892-7850, (301) 435-1224.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 26, 2000.

*Time:* 2:00 to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435-1225, politisa@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 27, 2000.

*Time:* 8 AM to 9 AM.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Residence Inn By Marriott, Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

*Contact Person:* Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435-1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 27-28, 2000.

*Time:* 9 AM to 5 PM.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Residence Inn By Marriott, Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

*Contact Person:* Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435-1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 27, 2000.

*Time:* 1 PM to 4 PM.

*Agenda:* To review and evaluate grant applications.

*NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).*

*Contact Person:* H. Mac Stiles, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301-435-1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* April 27, 2000.

*Time:* 1 PM to 2 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435-1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine,

93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, (HHS)

Dated: April 7, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00-9441 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 49018, September 9, 1999, and redesignated from Part NH as Part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the establishment of the Office of Bioengineering and Bioimaging in the Office of the Director, National Institutes of Health.

*Section N-B, Organization and Functions,* is amended as follows: (1) After the heading *Executive Office (NAR, formerly HNAR),* insert the following:

*Office of Bioengineering and Bioimaging (NAC, formerly HNAC).* (1) Increases biological knowledge and facilities development of novel methods, devices, and pharmaceuticals through the use of engineering, physical, and computational science principles and techniques; (2) coordinates and provides a focus for biomedical engineering, bioimaging, and bioinformatics issues among the institutes and centers at the NIH and with other Federal agencies; (3) conducts activities aimed at fostering new basic understandings and collaborations among the biological, medical, engineering, physical, and computational sciences; (4) coordinates trans-NIH bioengineering, bioimaging, and bioinformatics research programs; (5) develops transdisciplinary training and career development opportunities between the engineering/physical/computational science and biomedical communities; and (6) conducts symposia and technical meetings to facilitate communication and

dissemination of information among different technical disciplines.

Dated: April 5, 2000.

**Ruth Kirschstein,**

*Acting Director, National Institutes of Health.*

[FR Doc. 00-9431 Filed 4-14-00; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

#### National Institute of Environmental Health Sciences, NIH; National Toxicology Program; Peer Review Meeting on Low-Dose Issues for Endocrine Disruptors; Scope of Information Considered for Review Broadened, Deadline for Receipt of Information Extended, and Date for Meeting Delayed

#### Summary

The National Toxicology Program (NTP) is organizing a Peer Review to evaluate whether chemicals can cause hormone-related effects at doses lower than those typically used in the standard toxicological dose-setting paradigm. The U.S. Environmental Protection Agency (EPA) Endocrine Disruptor Screening Program will use the results from this peer review to assist in determining how to identify and characterize potential low-dose effects that may arise during endocrine disruptor screening, testing, and hazard assessment.

On January 6, 2000 the NTP published a **Federal Register** notice [Volume 65, Number 4, pages 784-787] outlining plans for the Peer Review meeting and soliciting public input into the process. This notice broadens the request for research studies and data to be considered and extends previously announced deadlines for receipt for research information for use in this peer review.

#### Broader Request for Research Studies to be Considered for the Peer Review

On January 6, 2000, the NTP published a **Federal Register** notice [Volume 65, Number 4, pages 784-787] providing details about a Peer Review meeting to evaluate scientific data on the potential low-dose effects associated with exposure to endocrine disruptors. In that notice, the NTP solicited comments on the planned scope and process of the proposed peer review, nominations of studies for inclusion in this review, as well as nominations of individuals for the Peer Review panel. The notice also detailed the criteria for selection of studies for review.

The NTP Selection/Organizing Committee will review the nominated studies and designate them as either critical to resolution of the low-dose issue or background information. The January 6th notice stipulated that studies nominated for consideration in this peer review should have been published or accepted for publication by April 1, 2000. The NTP is now broadening the scope of studies to be considered for this peer review to include relevant data from unpublished studies. Submission of unpublished studies should include an abstract of the study describing the hypothesis being tested, experimental design [model system (cell line, species, strain, number per group, etc.), dosing regimen, duration of treatment and follow-up], endpoints evaluated, and results (if available).

If an unpublished study is nominated for consideration, the NTP will contact the principal investigator for an update of the study's status and to obtain additional information about the study. If selected by the NTP Selection/Organizing Committee, the studies will be distributed to the Peer Review panel for its review and evaluation. The NTP may need access to raw data for subsequent independent analysis by the Panel. As with published studies and studies accepted for publication but not yet published, all information given to the Peer Review Panel will simultaneously be made available to the public. Therefore, studies, which are unpublished by the date of their distribution to the Panel, will require approval from the author (and publisher if accepted for publication) in order to be included in the Peer Review. A list of the studies included in the Peer Review will be posted on the NTP web page (<http://ntp-server.niehs.nih.gov>) and available from NTP Liaison and Scientific Review Office (NIEHS/NTP, P.O. Box 12233, Research Triangle Park, NC 27709; t: 919-541-0530; f: 919-541-0295). **Federal Register** announcement. Planning for the Peer Review Meeting is ongoing and the date and location will be announced in the **Federal Register** in the near future.

#### Solicitation of Public Comment

Comments about the scope and process for the Peer Review are welcome. The deadline for submission of comments, identified by docket control number OPPTS-42208A, is extended from February 22, 2000 to May 22, 2000.

#### Guidelines for Submission of Public Comment

The EPA will manage the record-keeping aspects of the Peer Review as part of the Endocrine Disruptor Screening Program. General information about the U.S. EPA Endocrine Disruptor Screening Program is available from the Internet at <http://www.epa.gov/scipoly/oscpendo/index.htm> or by contacting Mr. James Kariya (contact information provided below).

The EPA has established an official record for this action under docket control number OPPTS-42208A. The official record consists of the document specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as confidential business information (CBI). The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Room B-607, Waterside Mall, 401 M. Street, SW, Washington, DC. The Center is open from noon to 4 PM., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

Comments can be submitted through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that the docket control number OPPTS-42208A is identified in the subject line on the first page of the comments.

1. *By mail:* Submit comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

2. *In person or by courier:* Deliver comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St. SW, Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260-7093.

3. *Electronically:* Submit comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail the computer disk to the Document Control Office (address identified above). The form must be identified by docket

control number OPTTS-42208A. Electronic comments may also be filed online at many Federal Depository Libraries.

Do not submit any information that you consider is CBI. If you believe that relevant information will be overlooked because of this restriction, please consult James P. Kariya, Office of Science Coordination and Policy (7203), Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460; t: 202-260-2916; email: kariya.jim@epa.gov.

Dated: April 6, 2000.

**Samuel H. Wilson,**

*Deputy Director, National Toxicology Program.*

[FR Doc. 00-9443 Filed 4-14-00; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**ACTION:** Notice of Availability.

**SUMMARY:** The Fish and Wildlife Service has published a Comprehensive Conservation Plan, Environmental Assessment, and a Finding of No Significant Impact for Florida Panther National Wildlife Refuge in Collier County, Florida. The plan describes how the Fish and Wildlife Service intends to manage the refuge for the next 15 years.

**ADDRESSES:** A copy of the above documents may be obtained by writing to the Fish and Wildlife Service, Attention: Jennifer Harris, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345; or to Jim Krakowski, Refuge Manager, Florida Panther National Wildlife Refuge, 3860 Tollgate Boulevard, Suite 300, Naples, Florida 34114.

**SUPPLEMENTARY INFORMATION:** By implementing this comprehensive conservation plan, the refuge seeks to (1) provide a clear statement of the desired future conditions when refuge purposes and goals are accomplished; (2) provide refuge neighbors and visitors with a clear understanding of the reasons for management actions on and around the refuge; (3) ensure that management of other refuge reflects policies and goals of the National Wildlife Refuge System; (4) ensure that refuge management is consistent with federal, state, and county plans; (5) provide long-term continuity in refuge management; and (6) provide a basis for operation, maintenance, and capital improvement budget requests.

Dated: April 7, 2000.

**Judy L. Jones,**

*Acting Regional Director.*

[FR Doc. 00-9457 Filed 4-14-00; 8:45 am]

**BILLING CODE 4310-55-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

*Permit No. TE-023904*

*Applicant:* USDI Bureau of Land Management, North Palm Springs, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

*Permit No. TE-023895*

*Applicant:* Paul W. Collins, Santa Ynez, California

The applicant requests a permit to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

*Permit No. TE-023892*

*Applicant:* Lawrence Edward Hunt, Santa Barbara, California

The applicant requests a permit to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

*Permit No. TE-023886*

*Applicant:* San Diego Natural History Museum, San Diego, California

The applicant requests a permit to take (capture, handle, and collect tissue samples) the arroyo southwestern toad (*Bufo californicus*) in conjunction with surveys, population monitoring, ecological research, and population

augmentation throughout the species range for the purpose of enhancing its survival.

*Permit No. TE-018909*

*Applicant:* Kelly Michelle Rios, Brea, California

The permittee requests a permit amendment to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

*Permit No. TE-817397*

*Applicant:* John R. Storrer, Santa Barbara, California

The permittee requests a permit amendment to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

*Permit No. TE-009015*

*Applicant:* Jason Lee Berkley, Whittier, California

The permittee requests a permit amendment to take (capture and handle) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

*Permit No. TE-815144*

*Applicant:* Rosemary Ann Thompson, Santa Barbara, California

The permittee requests a permit amendment to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

*Permit No. TE-826513*

*Applicant:* Galen Rathbun, Bakersfield, California

The permittee requests a permit amendment to take (radio-tag) the blunt-nosed leopard lizard (*Gambelia sila*) in Kern County, California in conjunction with ecological research for the purpose of enhancing its survival.

*Permit No. TE-768251*

*Applicant:* Biosearch Wildlife Surveys, Santa Cruz, California

The permittee requests a permit amendment to take (capture, mark) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with population studies throughout the species range in California for the purpose of enhancing its survival.

*Permit No. 022615*

*Applicant:* Robert L. Calloway, Leonardtown, Maryland

The applicant requests a permit to purchase, in interstate commerce, two female and two male captive bred Hawaiian (=nene) geese (*Nesochen [=Branta] sandvicensis*) for the purpose of enhancing the species propagation and survival.

*Permit No. TE-702631*

*Applicant:* Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon

The permittee requests a permit amendment to remove and reduce to possession specimens of the following plant species: *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), *Hemizonia increscens ssp. villosa* (Gaviota tarplant), and *Lupinus nipomensis* (Nipomo Mesa lupine). Collection activities will be conducted throughout each species range in conjunction with recovery efforts for the purpose of enhancing their propagation and survival.

*Permit No. TE-025182*

*Applicant:* Ecosphere Environmental Services, Durango, Colorado

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax extimus traillii*) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

*Permit No. TE-025197*

*Applicant:* Lockheed Martin Environmental Service, Las Vegas, Nevada

The applicant requests a permit to take (harass by survey, capture and handle, collect tissue samples, and collect voucher specimens) the desert pupfish (*Cyprinodon macularius*), Gila topminnow (*Poeciliopsis occidentalis*), Gila trout (*Oncorhynchus gilae*), and Humpback chub (*Gila cypha*) in conjunction with presence or absence surveys and scientific research throughout each species range for the purpose of enhancing their survival.

*Permit No. TE-776608*

*Applicant:* Monk and Associates, Walnut Creek, California

The permittee requests a permit amendment to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County,

California for the purpose of enhancing its survival.

*Permit No. TE-025204*

*Applicant:* Linda Ann Vorobik, Lopez Island, Washington

The applicant requests a permit to remove and reduce to possession specimens of *Arabis macdonaldiana* in conjunction with genetic research and the collection of voucher specimens throughout the species range for the purpose of enhancing its survival.

*Permit No. TE-685022*

*Applicant:* Rudi Mattoni, University of California, Los Angeles, California

The permittee requests a permit amendment to take (survey by pursuit, harass, collect for captive propagation, handle, captive rear, and release) the Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) in conjunction with presence and absence surveys and scientific research throughout its range for the purpose of enhancing its survival.

*Permit No. TE-025203*

*Applicant:* David J. Griffin, Alpine, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys in Riverside and San Diego Counties, California for the purpose of enhancing their survival.

*Permit No. TE-025202*

*Applicant:* Janette Holtz, San Diego, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys and population monitoring in San Diego County, California for the purpose of enhancing their survival.

*Permit No. TE-025201*

*Applicant:* Bonnie Ripley, San Diego, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys and population monitoring in San Diego County, California for the purpose of enhancing their survival.

**DATES:** Written comments on these permit applications must be received on or before May 17, 2000.

**ADDRESSES:** Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181; Fax: (503) 231-6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231-2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: April 6, 2000.

**Thomas Dwyer,**

*Regional Director, Region 1, Portland, Oregon.*  
[FR Doc. 00-9458 Filed 4-15-00; 8:45 am]

**BILLING CODE 4310-55-U**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Notice of Availability of a Draft Revised Recovery Plan for the Oregon Silverspot Butterfly for Review and Comment**

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of a draft revised recovery plan for the Oregon silverspot butterfly (*Speyeria zerene hippolyta*) for public review. This butterfly is distributed in six small areas along the Pacific coast from northern California to southern Washington. The Oregon silverspot butterfly depends upon coastal grasslands that contain the larval host plant (early blue violet), nectar sources, and adult courtship areas. This draft revised plan updates the original recovery plan that was completed in 1982.

**DATES:** We must receive your comments on the draft revised recovery plan on or

before June 16, 2000 for us to consider them in developing the final plan.

**ADDRESSES:** You may obtain a copy of the draft revised recovery plan by contacting the U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon, 97266; phone (503) 231-6179. Send written comments or other materials on the plan to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rich Szlemp, Supervisory Fish and Wildlife Biologist, at the above address.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary to conserve the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. We will consider all information presented during a comment period before we approve a new or revised recovery plan. We and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Oregon silverspot butterfly, which was listed as threatened with critical habitat in 1980, is a small, darkly marked coastal subspecies of the Zerene fritillary butterfly. This subspecies occurs in six small pockets of remaining habitat at: Del Norte/Lake Earl in California; Clatsop Plains, Mt. Hebo, Cascade Head, and Rock Creek-Big Creek in Oregon; and Long Beach in Washington. The Long Beach population may be extirpated and the

population on the Clatsop Plains is extremely low and at risk of extirpation. A recovery plan was completed in 1982. At the time of listing, the only known viable population occurred in the Rock Creek-Big Creek area. The original recovery plan included recovery actions for the Rock Creek-Big Creek area as well as the rediscovered population of butterflies at Mt. Hebo. Since that time, additional Oregon silverspot populations have been discovered or rediscovered at Cascade Head, Bray Point, Clatsop Plains, and Del Norte.

The open vegetation preferred by the butterfly has always had a patchy distribution that was maintained through wildfire, salt-laden winds, grazing, and controlled burning. Habitat has declined due to residential and commercial development, invasion of exotic plant species, overgrazing, and lack of fire. Current threats to Oregon silverspot butterflies include continued habitat alteration, continued invasion of non-native plants, off-road vehicle use, and vegetation change due to fire suppression.

The draft revised recovery plan calls for restoring and protecting habitat for the Oregon silverspot butterfly to establish or maintain viable populations in six habitat conservation areas. Because Oregon silverspot butterfly populations have been extirpated and existing ones are still declining, the revised recovery plan also calls for augmenting existing populations with captive-reared individuals and reintroducing butterflies in areas where they have been extirpated. When the revised plan is completed, it will guide all Federal and State agencies whose actions affect the conservation of the Oregon silverspot butterfly.

**Public Comments Solicited**

We solicit written comments on this draft revised recovery plan. We are particularly interested in receiving any recent information regarding the occurrence, distribution, or number of butterflies that is not included in the draft revised plan. We are also particularly interested in information pertaining to specific criteria to be considered when proposing to augment or reintroduce Oregon silverspot butterflies. We will consider all comments received by the date specified above before approving the plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 11, 2000.

**Thomas Dwyer,**

*Regional Director, U.S. Fish and Wildlife Service, Region 1.*

[FR Doc. 00-9459 Filed 4-14-00; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Proposal To Register an Operation Breeding an Appendix-I Species in Captivity for Commercial Purposes according to the Convention on International Trade in Endangered Species of Wild Fauna and Flora**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce that we intend to submit to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) a proposal to register Rapid Creek Ranch, a breeding facility for gyrfalcons (*Falco rusticolus*) owned and operated by Robert B. Berry, Sheridan, Wyoming, as a commercial breeding operation for an Appendix-I species. The registration of this facility will allow specimens to be designated as bred in captivity for commercial purposes and deemed to be specimens of species included in Appendix II, as provided for in Article VII, paragraph 4, of CITES. Public comments are solicited.

**DATES:** Comments will be accepted until May 17, 2000.

**ADDRESSES:** Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail stop ARLSQ 750, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (fax, 703-358-2276; E-mail, [r9osa@fws.gov](mailto:r9osa@fws.gov)). Copies of the full text of the registration proposal are available from the Office of Scientific Authority and will be mailed upon request. Comments and other information received are available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia, address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. Gabel at the address given above (telephone: 703-358-1708).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Convention on International Trade in Endangered Species of Wild

Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international treaty designed to regulate international trade in animal and plant species that are or may become threatened with extinction. Authority for implementing CITES has been delegated to the Secretary of Interior through the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). Species are listed in Appendix I, II, or III of CITES, depending on the degree of threat and level of control needed. Species listed in Appendix I receive the highest level of protection and require both an import permit from the country of import and an export permit from the country of export, and imports may not be for primarily commercial purposes. However, Article VII, paragraph 4, of CITES provides that specimens of animal species included in Appendix I bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II. Appendix-II species require an export permit only (no import permit) and may be imported for commercial or non-commercial purposes.

Through resolutions adopted at meetings of the Conference of the Parties to CITES, the Parties have defined criteria for registering breeding operations with the CITES Secretariat, whereby specimens of Appendix-I species from those operations would qualify as bred in captivity for commercial purposes. Resolution Conf. 10.16 adopted at the Tenth Meeting of the Conference of the Parties to CITES requires that parental breeding stock at such operations must: (a) Be established in accordance to the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; (b) be maintained without introduction of specimens from the wild, except for occasional augmentation to prevent or alleviate deleterious inbreeding, and for other limited purposes; and (c) have produced offspring of second (F2) or subsequent generations (F3, F4, etc.) in a controlled environment, belong to a species included in a list (established by the CITES Standing Committee) of species commonly bred to the second or subsequent generations in captivity, or be managed in a manner that has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment. Resolution Conf. 8.15 provides guidelines for registering and monitoring operations breeding Appendix-I animal species for commercial purposes, and specifies the documentation required to establish that

the operation meets the criteria of Resolution Conf. 10.16.

To register a captive-breeding operation, the Management Authority of the country in which the operation is located must approve the operation, in consultation with that country's Scientific Authority. The sponsoring Management Authority must then submit a proposal to register the operation to the CITES Secretariat, which will follow the process presented in Resolution Conf. 8.15.

After a review of relevant information, including breeding records and other documentation, we have prepared for submission to the CITES Secretariat the following proposal: the registration of Rapid Creek Ranch, owned and operated by Robert B. Berry, Sheridan, Wyoming, as a commercial captive-breeding operation for gyrfalcons (*Falco rusticolus*), an Appendix-I species. This is only the second commercial captive-breeding operation proposed for registration within the United States for any species, it is not the first operation registered with the CITES Secretariat for this species; 11 operations are already registered with the Secretariat for gyrfalcons, one of which is in the United States. The Rapid Creek Ranch operation was established in 1978 and first began breeding this species in 1980, with 150 gyrfalcons produced from 1982 to 1999. Over 75 percent of these offspring have been second-generation captive-bred offspring. We are satisfied that all breeding stock has been legally acquired and maintained under appropriate permits. Mr. Berry has provided detailed information on current holdings, husbandry practices, enclosures, production at his operation, and breeding strategies for genetic management of his flocks so as to minimize deleterious inbreeding.

#### Required Determination

In March 1998, we prepared an Environmental Assessment (EA) as required by the National Environmental Policy Act (NEPA) for this notice and concluded in a Finding of No Significant Impact (FONSI) based on a review and evaluation of the information contained within the EA that there would be no significant impact on the human environment as a result of the registration of operations breeding Appendix-I species in captivity for commercial purposes, and that the preparation of an environmental impact statement on this action is not required by Section 102(2) of NEPA or its implementing regulations. The EA and FONSI for this action are on file at our Office of Scientific Authority in Arlington, Virginia, and a copy may be

obtained by contacting the individual identified under the section entitled, **FOR FURTHER INFORMATION.**

#### Author

This notice was prepared by Mr. Robert R. Gabel, Chief, Branch of Consultation and Monitoring, Office of Scientific Authority, U.S. Fish and Wildlife Service (703/358-1708).

Dated: April 10, 2000.

#### Kristen Nelson,

Acting Chief, Office of Management Authority.

[FR Doc. 00-9526 Filed 4-14-00; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Availability

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for the Construction of One Single Family Residence on 0.5 acres of the 7.6-acre Lot 20, Section 2 in the Circle D Country Acres Subdivision in Bastrop County, Texas.

**SUMMARY:** Paula Hanks and Jason Sims (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE-024872-0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on Lot 20, Section 2 of the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received on or before May 17, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Tannika Engelhard, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0057, extension 242). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE-024872-0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, TX.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

#### Applicant

Paula Hanks and Jason Sims plan to construct one single family residence on 0.5 acres of the 7.6-acre Lot 20, Section 2 in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat and result in an unquantifiable amount of indirect impact. The applicants propose to compensate for this incidental take of the Houston Toad by providing \$1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

#### Geoffrey L. Haskett,

*Acting Regional Director, Region 2,  
Albuquerque, New Mexico.*

[FR Doc. 00-9356 Filed 4-14-00; 8:45 am]

**BILLING CODE 4510-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-050-1610-DG]

#### Notice of Intent To Revise the Nellis Air Force Range Resource Plan and Prepare a New Environmental Impact Statement

**AGENCY:** Department of the Interior, Bureau of Land Management in cooperation with the Department of Defense, Nellis Air Force Base and the United States Fish and Wildlife Service.

**ACTION:** Notice of Intent. The Bureau of Land Management is proposing to revise the existing Nellis Air Force Range Resource Plan based on specific direction within Public Law 106-65, section 3014. The BLM will include an amendment to the Tonopah Resource Management Plan which will prescribe management of the lands identified for return to public land management, all in one action.

**SUMMARY:** New issues have surfaced which require additional analysis to determine the best use of the existing resources. New issues include: (1) The Nellis Range is located in the serious non-attainment for PM 10 and Carbon Monoxide; (2) management of the Wild Horses on the range has caused much controversy over the past 10 years; (3) approximately 30,000 acres may be returned to public land management status provided it is hazardous materials free. The Bureau is interested in other issues the public will present as part of the record.

Due to an accelerated timeline set forth by Congress and the President, for completion of this revised Nellis Range Resource Plan, October 5, 2001, the BLM will ensure the process proceeds as quickly as possible.

**COOPERATING AGENCY STATUS:** This plan revision is being completed in full cooperation with the United States Fish and Wildlife Service and the Department of Defense. Based on other express interest by other State and Federal agencies as well as all three county's affected by this action, we anticipate additional interest in cooperating agency status. We will either wait until the Notice of Availability is sent to identify those additional cooperators or issue a separate **Federal Register** notice in the next 2 to 3 months.

**DATES:** Public scoping meeting are set for the week of May 1-5 as follows: Monday, May 1, 2000; 3-5pm at the Beatty Community Center, Beatty Nevada, 100 A Avenue South. Monday,

May 1, 2000; 7-9pm at the Tonopah Convention Center, 301 Brougner Avenue, Tonopah, Nevada. Tuesday, May 2, 2000; 7-9pm at the Bob Ruud Community Center, 150 N. Highway 160, Pahrump, Nevada. Wednesday, May 3, 2000; 7-9pm, at the Amargosa Valley Community Center, 821 E. Farm Road, Amargosa, Nevada. Thursday, May 4, 2000; 7-9pm at the New Alamo High School Multi-purpose Room, 151 S. Main, Alamo Nevada. Friday, May 5, 2000; 7-9pm at the BLM Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas Nevada. Other meetings may be planned in the future if a need is expressed.

**ADDRESSES:** For further information contact Jeffrey G. Steinmetz, Las Vegas Field Office Environmental Protection Specialist and Team Lead for the BLM at Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone (702)-647-5000.

**FOR FURTHER INFORMATION CONTACT:** Jeff Steinmetz, RMP Team Leader, at BLM's Las Vegas Field Office listed above or telephone (702) 647-5097.

Dated: April 5, 2000.

**Mark T. Morse,**

*Field Manager.*

[FR Doc. 00-9423 Filed 4-14-00; 8:45 am]

**BILLING CODE 4310-HC-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-929-1220-PA-002E]

#### Notice of Proposed Supplementary Rule Concerning Minors in Possession of Alcoholic Beverages on Public Lands Administered by the Bureau of Land Management (BLM); Montana, North Dakota, and South Dakota

**AGENCY:** Bureau of Land Management, DOT.

**ACTION:** Notice.

**SUMMARY:** Underage drinking is a growing problem on the public lands. Such activity poses a significant health and safety hazard to both underage violators and other users of the public lands and can result in the destruction of natural resources and property.

Therefore, the State Director is prohibiting the possession, or providing, of an intoxicating substance by, or to, a person under 21 years of age upon the public lands in Montana, North Dakota, and South Dakota. This action will allow BLM law enforcement officers to restrict the supply and possession and/or consumption of alcoholic beverages

by minors, on BLM-administered public lands and recreation areas, in a manner consistent with Montana Code Annotated (MCA) 45-5-624, MCA 16-6-304, and MCA 16-6-305; ND Century Codes 5-01-01, 5-01-08, and 5-01-09; and SD Code 35-1-1, 35-9-1, 35-9-1.1, and 35-9-2. An intoxicating substance is defined in MCA 45-2-101 (31)(a).

This supplementary rule is issued under the authority of 43 CFR 8365.1-6.

#### Penalties

As prescribed under the Federal Land Policy and Management Act, 43 USC, Section 1733(a), and the Taylor Grazing Act, the violation is punishable by fines and/or imprisonment under 43 CFR 8360.0-7, with fines up to \$1000 and/or 12 months in jail, or \$500 as authorized under the Taylor Grazing Act (43 USC 315a).

**DATES:** To comply with the Administrative Procedures Act, if no significant opposition is received, this rule will go into effect May 17, 2000, and will remain in effect until rescinded or modified by the authorized officer.

**FOR FURTHER INFORMATION CONTACT:** Special Agent in Charge, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, (406) 896-5010.

Dated: March 23, 2000.

Larry E. Hamilton,  
State Director.

[FR Doc. 00-9424 Filed 4-14-00; 8:45 am]

BILLING CODE 4310-DN-P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection (OMB Control Number 1010-0053).

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below on oil and gas drilling operations. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that 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.

**DATES:** Submit written comments by June 16, 2000.

**ADDRESSES:** Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817. 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 may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787-1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

#### SUPPLEMENTARY INFORMATION:

*Title:* 30 CFR 250, Subpart D, Oil and Gas Drilling Operations.

*OMB Control Number:* 1010-0053.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and

seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This collection of information addresses 30 CFR 250, subpart D, Oil and Gas Drilling Operations.

The MMS uses the information to ascertain the condition of a drilling site to prevent hazards inherent in drilling operations. Among other things, MMS specifically uses the information to ensure: (a) The drilling unit is fit for the intended purpose; (b) the lessee will not encounter geologic conditions that present a hazard to operations; (c) equipment is maintained in a state of readiness and meets safety standards; (d) each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; (e) compliance with safety standards; and (f) the proposed field drilling rules will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H<sub>2</sub>S and to ensure that H<sub>2</sub>S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H<sub>2</sub>S and zones where the presence of H<sub>2</sub>S is unknown.

Responses are mandatory. Proprietary information respondents submit is protected according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. No items of a sensitive nature are collected.

*Frequency:* The frequency of reporting varies by section, but is mostly on occasion.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil, gas, and sulphur lessees.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* The currently approved burden for this information collection is 107,698 hours (3,389 reporting and 103,859 recordkeeping hours). This averages approximately 830 hours per respondent.

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* We have identified no non-hour cost burdens.

*Comments:* We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208-7744.

Dated: March 31, 2000.

**E.P. Danenberger,**  
Chief, Engineering and Operations Division.  
[FR Doc. 00-9425 Filed 4-14-00; 8:45 am]  
**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection (OMB Control Number 1010-0067).

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below on oil and gas well-control operations. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that 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.

**DATES:** Submit written comments by June 16, 2000.

**ADDRESSES:** Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817. 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 may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787-1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

#### SUPPLEMENTARY INFORMATION:

*Title:* 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations  
*OMB Control Number:* 1010-0067.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This collection of information addresses 30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations.

The MMS district supervisors analyze and evaluate the information and data collected under subpart E to ensure that planned well-completion operations will protect personnel safety and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion

operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

Responses are mandatory. Proprietary information respondents submit is protected according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. No items of a sensitive nature are collected.

**Frequency:** The frequency of reporting varies by section, but is mostly on occasion.

**Estimated Number and Description of Respondents:** Approximately 130 Federal OCS oil, gas, and sulphur lessees.

**Estimated Annual Reporting and Recordkeeping "Hour" Burden:** The currently approved burden for this information collection is 4,481 hours (338 reporting and 4,503 recordkeeping hours). This averages approximately 35 hours per respondent.

**Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:** We have identified no non-hour cost burdens.

**Comments:** We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and

startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

**MMS Information Collection Clearance Officer:** Jo Ann Lauterbach, (202) 208-7744.

Dated: March 31, 2000.

**E.P. Danenberger,**  
Chief, Engineering and Operations Division.  
[FR Doc. 00-9426 Filed 4-14-00; 8:45 am]  
**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, DOI.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining (OSM) is announcing its intention to request approval for the collection of information for noncoal reclamation, 30 CFR part 875.

**DATES:** Comments on the proposed information collection must be received by June 16, 2000, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210-SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtreleas@osmre.gov](mailto:jtreleas@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208-2783.

**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 1320.8(d)). This notice identifies an information collection activity that OSM will submit to OMB for extension. This collection is contained in 30 CFR part 855, Noncoal reclamation.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

**Title:** Noncoal reclamation, 30 CFR 875.

**OMB Control Number:** 1029-0103.

**Summary:** This Part establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with the Surface Mining Control and Reclamation Act of 1977.

**Bureau Form Number:** None.

**Frequency of Collection:** Once.

**Description of Respondents:** State governments and Indian Tribes.

**Total Annual Responses:** 7.

**Total Annual Burden Hours:** 340.

Dated: April 11, 2000.

**Richard G. Bryson,**  
Chief, Division of Regulatory Support.  
[FR Doc. 00-9462 Filed 4-14-00; 8:45 am]

**BILLING CODE 4310-05-M**

**DEPARTMENT OF JUSTICE****Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act**

Notice is hereby given that on March 14, 2000, a complaint and a proposed consent decree in *United States and the State of Colorado v. Beazer East, Inc. and Butala Construction Company*, Civil Action No. 00-D-561, were lodged with the United States District Court for the District of Colorado.

In this action the United States seeks recovery of approximately \$631,000 in unreimbursed response costs incurred in relation to Operable Unit #2 of the Smelertown Superfund Site, located near Salida, Colorado, under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act. The State of Colorado seeks recovery of response costs to be incurred at the Site. Under the proposed decree, the defendants implement a remedial action selected by the United States Environmental Protection Agency, which is designed to prevent the further migration of hazardous substances at Operable Unit #2, and will reimburse all of EPA's past costs, as well as all of EPA's and the State of Colorado's future response costs incurred at Operable Unit #2.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Colorado, v. Beazer East, Inc. and Butala Construction Company*, D.J. Ref. 90-11-3-1522.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, 11th Floor, Drawer 3608, Denver, CO 80294 and at U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 8020. A copy of the Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611. In requesting a copy, please enclose a check in the amount of \$20.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*  
[FR Doc. 00-9427 Filed 4-14-00; 8:45 am]

**BILLING CODE 4410-15-M**

**DEPARTMENT OF JUSTICE****Notice of Lodging of Consent Decree Under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act**

Notice is hereby given that on March 14, 2000, a complaint and proposed Consent Decree ("Decree") in *United States v. the Lockheed Martin Corporation* (D. CO) Civil Action No. 00-562, was lodged with the United States District Court for the District of Colorado.

The United States filed this action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613, and RCRA, 42 U.S.C. §§ 6901 et seq. In the complaint, the United States Air Force ("USAF") seeks, among other things, contribution from Lockheed Martin Corporation ("LMC") for costs incurred and to be incurred by the USAF for response actions as the PJKS National Priorities List site in Jefferson County, Colorado ("Site").

The proposed consent decree resolves the USAF's CERCLA Sections 107 and 113 claims against LMC and the contribution claims LMC could bring against the USAF under Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1). The proposed decree provides for a cash payment of \$3.5 million over 10 years from LMC to the USAF and clean up services from LMC, specified under separate agreement with the USAF, that could ultimately reduce total clean up costs to the USAF by as much as \$35.25 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States v. The Lockheed Martin Corporation* (D. CO), and D.J. Ref. #90-11-3-925/1.

The Decree may be examined at the office of the U.S. Attorneys Office for the District of Colorado, 1961 Stout Street, Suite 1200, Denver, CO 80294. A copy of the Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044-7611. In requesting a copy, please enclose a check in the amount of \$15.75 for the Decree or (25 cents per page

reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*  
[FR Doc. 00-9428 Filed 4-14-00; 8:45 am]

**BILLING CODE 4410-15-M**

**DEPARTMENT OF LABOR****Office of the Secretary****Submission for OMB Review; Comment Request**

April 7, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219-5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219-5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), on or before May 17, 2000.

The OMB is particularly interested in comments which:

- \* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- \* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- \* Enhance the quality, utility, and clarity of the information to be collected; and

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

*Agency:* Employment standards Administration (ESA).

*Title:* Request for Earnings Information.

*Type of Review:* Extension.

*OMB Number:* 1215-0112.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Number of Respondents:* 1,700.

*Estimated Time Per Response:* 15 minutes.

*Total Burden Hours:* 425.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* Report gathers information regarding an employee's average weekly wage. This information is needed for determination of compensation benefits in accordance with Section 10 of the Longshore and Harbors Workers' Compensation Act.

*Agency:* Employment Standards Administration (ESA).

*Title:* The Remedial Education Provisions of the Fair Labor Standards Act.

*Type of Review:* Extension.

*OMB Number:* 1215-0175.

*Frequency:* On occasion.

*Affected Public:* Business or other for profit; Not-for-profit institutions; State, Local, or Tribal Government.

*Number of Respondents:* 15,000.

*Estimated Time Per Response:* 10 minutes.

*Total Burden Hours:* 5,000.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* These recordkeeping requirements for employers utilizing the partial overtime for remedial education are necessary to insure employees are paid in compliance with the remedial education provisions of the Fair Labor Standards Act.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00-9525 Filed 4-14-00; 8:45 am]

BILLING CODE 4510-27-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-36,809]

**Bayer Diagnostics, Oberlin, Ohio, Including Leased Workers of Adecco Employment Services, Inc., Elyria, Ohio, Aerotek, Cleveland, Ohio, Cleveland Business Consultant, Cleveland, Ohio, Compuware Corp., Detroit, Michigan, Exclusive Search Consultant, Euclid, Ohio, Reserves Network, Pasadena, California, Manpower Temporary Services, Elyria, Ohio, Kelly Services, Inc., Amherst Ohio, Keybase, Cleveland, Ohio, Lab Support, Independence, Ohio, Mac Temps, Independence, Ohio, Milko Tech, Inc., Solon, Ohio, Onsite Commercial Staffing, Seven Hills, Ohio, Rad-Com, Inc., Stow, Ohio and Tech Aid, Willoughby Hills, Ohio; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 16, 1999, applicable to workers of Bayer Diagnostics, Oberlin, Ohio. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2432).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that some employees of Bayer Diagnostics were leased from several temporary agencies to produce medical diagnostic instrumentation used in hospital labs at the Oberlin, Ohio facility. Worker separations occurred at these companies as a result of worker separations at Bayer Diagnostics, Oberlin, Ohio.

Based on these findings, the Department is amending the certification to include workers of Adecco Employment Services, Inc., Aerotek, Cleveland Business Consultant, Compuware Corp., Exclusive Search Consultant, Kelly Services, Keybase, Lab Support, Mac Temps, Manpower Temporary Services, Milko Tech, Inc., Onsite Commercial Staffing, Rad-Com, Inc., Reserves Network, and Tech Aid leased to Bayer Diagnostics, Oberlin, Ohio.

The intent to the Department's certification is to include all workers of Bayer Diagnostics, Oberlin, Ohio adversely affected by imports.

The amended notice applicable to TA-W-36,809 is hereby issued as follows:

"All workers of Bayer Diagnostics, Oberlin, Ohio and leased workers of Adecco Employment Services, Aerotek, Cleveland Business Consultant, Compuware Corp., Exclusive Search Consultant, Kelly Services, Inc., Keybase, Lab Support, Mac Temps, Manpower Temporary Services, Milko Tech, Inc., Onsite Commercial Staffing, Rad-Com, Inc., Reserves Network and Tech Aid engaged in employment related to the production of medical diagnostic instrumentation used in hospital labs for Bayer Diagnostics, Oberlin, Ohio who became totally or partially separated from employment on or after August 26, 1998 through December 16, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 6th day of April, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-9524 Filed 4-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-37,273]

**Cumberland Apparel, Monticello, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 23, 2000, applicable to workers of Cumberland Apparel, Monticello, Kentucky. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce children's sleepwear. New findings show that there was a previous certification, TA-W-33,812, issued on September 22, 1997, for workers of Cumberland Apparel, Monticello, Kentucky who were engaged in employment related to the production of children's sleepwear. That certification expired September 22, 1999. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from January 10, 1999 to September 23, 1999, for workers of the subject firm.

The amended notice applicable to TA-W-37,273 is hereby issued as follows:

All workers of Cumberland Apparel, Monticello, Kentucky who became totally or partially separated from employment on or after September 23, 1999 through March 23, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of April, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-9519 Filed 4-14-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-37,455]

#### McCain Foods, Burley, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 7, 2000, in response to a petition filed on the same date on behalf of workers at McCain Foods, Burley, Idaho.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 4th day of April, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-9522 Filed 4-14-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-37,333]

#### S. Bent & Bros., Inc. Gardner, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 14, 2000, in response to a worker petition which was filed by IUE Local 154-136B FW, on behalf of workers at S. Bent & Bros., Inc., Gardner, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 4th day of April, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-9523 Filed 4-14-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-03730]

#### Timbergon, Redmond, Oregon; Notice of Termination of Investigation

Pursuant to Section 250 of the Trade Act of 1974, an investigation was initiated on February 17, 2000 on behalf of workers at Timbergon, Redmond, Oregon.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 6th day of April 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-9520 Filed 4-14-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-03750]

#### VDO North America, LCC, Cheshire, Connecticut; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 18, 2000 in response to a petition filed on behalf of workers at VDO North America, Cheshire, Connecticut.

In a letter dated March 29, 2000, the petitioner requested that the petition for NAFTA-TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of April, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-9521 Filed 4-14-00; 8:45 am]

**BILLING CODE 4510-30-M**

## NATIONAL COMMUNICATIONS SYSTEM

### Telecommunications Service Priority System Oversight Committee

**AGENCY:** National Communications System (NCS).

**ACTION:** Notice of Meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, April 25, 2000 from 9:00 a.m. to 12:00 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCC conference room on the 2nd floor.

—Opening/Administration Remarks  
—Status of the TSP Program  
—CLEC/Broadband Discussion

Anyone interested in attending or presenting additional information to the Committee, please contact Mr. Richard Moran, Manager, Office of Priority Telecommunications, (703) 607-4930.

**Frank McClelland,**

*Federal Register Liaison Officer, National Communications System.*

[FR Doc. 00-9511 Filed 4-14-00; 8:45 am]

**BILLING CODE 5001-08-M**

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Cooperative Agreement for a Project Titled: U.S. Audiences/International Work

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notification of availability.

**SUMMARY:** The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for a two year pilot project to devise, implement, document, and assess models for the translation of contemporary performance work from Asia, Africa, or Latin America that has a significant text-based element, and the development of educational strategies that will help audiences understand the cultural and social context from which the work emanates. The initiative will also require implementation of a process for dissemination of information about the models, and facilitation of the

touring of the identified works to small and mid-sized communities. Eligibility to apply is limited to tax exempt organizations. Endowment funding will be \$200,000. A one-to-one match is required. Eligibility to apply for the Cooperative Agreement is limited to tax exempt organizations. Those interested in receiving the solicitation package should reference Program Solicitation PS 00-04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at <http://www.arts.gov>.

**DATES:** Program Solicitation PS 00-04 is scheduled for release approximately May 2, 2000 with proposals due on May 31, 2000.

**ADDRESSES:** Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506 (202-682-5482).

**William I. Hummel,**

*Coordinator, Cooperative Agreements.*

[FR Doc. 00-9512 Filed 4-14-00; 8:45 am]

**BILLING CODE 7537-01-M**

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Cooperative Agreement for the Continued Management and Administration of a Career Development Program for Stage Directors and Designers

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notification of Availability.

**SUMMARY:** The National Endowment for the Arts is requesting proposals leading to the award of one (1) Cooperative Agreement for the continued management and administration of a Career Development Program for Stage Directors, and a Career Development Program for Stage Designers. These Programs enable emerging Stage Directors and Stage Designers to work in situations, including residency and/or mentoring activities, that will develop their artistic skills and enhance their contributions to America's nonprofit professional arts institutions and their audiences. The recipient of the

Cooperative Agreement will be responsible for all aspects of the program including the solicitation of applications from Stage Directors and Stage Designers, convening of selection panels, administering twelve awards of \$17,500 each to the successful applicants, and the development and coordination of appropriate residencies or other appropriate placement situations for the Directors and Designers. Those interested in receiving the Solicitation package should reference Program Solicitation PS 00-03 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at <http://www.arts.gov>.

**DATES:** Program Solicitations PS 00-03 is scheduled for release approximately May 1, 2000 with proposals due by May 31, 2000.

**ADDRESSES:** Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202-682-5482).

**William I. Hummel,**

*Coordinator, Cooperative Agreements.*

[FR Doc. 00-9513 Filed 4-14-00; 8:45 am]

**BILLING CODE 7537-01-M**

## NORTHEAST DAIRY COMPACT COMMISSION

### Notice of Meeting

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also hold its deliberative meeting to consider whether to implement a supply management program.

**DATES:** The meeting will begin at 10:30 a.m. on Wednesday, May 3, 2000.

**ADDRESSES:** The meeting will be held at The Centennial Inn, Armenia White

Room, 96 Pleasant Street, Concord, New Hampshire (I-93 Exit 14).

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229-1941.

**Authority:** 7 U.S.C. 7256.

Dated: April 11, 2000.

**Kenneth M. Becker,**

*Executive Director.*

[FR Doc. 00-9461 Filed 4-14-00; 8:45 am]

**BILLING CODE 1650-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-3453]

### MOAB Mill Reclamation Trust

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of a request from Moab Mill Reclamation Trust to revise site-reclamation milestones in License No. SUA-917 for the Moab, Utah, facility and notice of opportunity for a hearing.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated March 31, 2000, a request from Moab Mill Reclamation Trust to amend License Condition (LC) 55 A and B of Source Material License SUA-917 for the Moab, Utah, facility. The license amendment request proposes to modify LC 55 A.(1) to change the completion date for placement of the windblown tailings on the pile to December 31, 2001; LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile to December 31, 2002; LC 55 B.(1) to change the completion date for placement of the erosion protection on the pile to June 30, 2003; and LC 55 B.(2) to change the completion date for ground-water corrective actions to July 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415-6629.

**SUPPLEMENTARY INFORMATION:** The portion of LC 55 with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the U.S. Environmental Protection Agency (56 FR 55432, October 25, 1991), the Licensee shall complete reclamation to control radon emissions

as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—December 31, 2001.

(2) Placement of the interim cover—Complete.

(3) Placement of the final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m<sub>2</sub>/s above background—December 31, 2002.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—June 30, 2003.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—July 31, 2008.

Moab Mill Reclamation Trust's request to amend LC 55 of Source Material License SUA-917, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Moab Mill Reclamation Trust, c/o William B. Abington, PricewaterhouseCoopers LLP, 1201 Louisiana, Suite 2900, Houston, Texas 77002; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing. In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 10th day of April 2000.

For the Nuclear Regulatory Commission,  
**Thomas H. Essig**,  
*Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00-9466 Filed 4-14-00; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 040-08778]**

### **Notice of Consideration of Amendment Request for Molycorp, Washington, PA, Site and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (NRC) is considering

issuance of a license amendment to Source Materials License 1393 issued to Molycorp (the licensee), to approve an alternate schedule for submittal of Part II of the Decommissioning Plan for the Molycorp, Washington, PA, site.

The Molycorp, Washington, PA, site is being decommissioned in two parts, under two sets of decommissioning criteria. Part I, for which a Decommissioning Plan (DP) was submitted on June 30, 1999, pertains to remediation at the site in accordance with NRC's "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Sites" (Action Plan) (57 FR 13389). The current license amendment request which is the subject of this notice, pertains to Part II of the DP; the disposition of material exceeding levels in the Action Plan under the criteria of the 1997 Radiological Criteria for License Termination (10 CFR Part 20, Subpart E). The licensee has requested that the date of submittal be extended from April 16, 2000, to July 16, 2000. An NRC administrative review has been performed, as documented in a letter to Molycorp dated April 4, 2000.

If the NRC approves the alternate schedule, the approval will be documented in an amendment to NRC License SMB-1393. However, before approving the proposed amendment, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to: Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, between 7:45 a.m., and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile addressed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail, to:

1. The applicant, Molycorp, Inc., 300 Caldwell Avenue, Washington, PA 15301, Attention: George Dawes, and,
2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, between 7:45 a.m., and 4:15 p.m., Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and,
4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

**FOR FURTHER INFORMATION CONTACT:** The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. Any questions with respect to this action should be referred to Roy Person, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-6701. Fax: (301) 415-5398.

Dated at Rockville, Maryland, this day of April 2000.

For the Nuclear Regulatory Commission.

**Robert A. Nelson,**

*Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00-9465 Filed 4-14-00; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Experts' Meeting on Burnup Credit in Spent Fuel Shipping Casks

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission will hold a meeting to develop a Phenomena Identification and Ranking Table (PIRT) for allowing burnup credit in spent fuel shipping casks. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About fifteen of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The PIRT activity is addressing technical issues related to burnup credit in the criticality safety analyses of PWR spent fuel in transport casks.

**DATE:** May 16-18, 2000, 8:30 am-5:30 pm.

**ADDRESSES:** Atomic Safety and Licensing Board Panel Hearing Room (T3B45) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

**SUPPLEMENTARY INFORMATION:** The meeting agenda will be posted on the NRC Web site at [www.nrc.gov/RES/meetings.html](http://www.nrc.gov/RES/meetings.html) by May 1, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby, but an escort is not required.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Ebert, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, D.C. 20555-0001, telephone (301) 415-6501; email [dde@nrc.gov](mailto:dde@nrc.gov).

Dated at Rockville, Maryland, this 11th day of April 2000.

For the Nuclear Regulatory Commission.

**Charles E. Rossi,**

*Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. 00-9469 Filed 4-14-00; 8:45 am]

**BILLING CODE 7590-01-P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Statement of Claimed Railroad Service and Earnings; OMB 3220-0025. To qualify for unemployment of sickness benefits payable under section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following form(s) to obtain information needed to determine if a claimant has sufficient service or

compensation to qualify for unemployment or sickness benefits.

Form No. and title	Annual re-sponses	Estimated completion time (min)	Burden (hours)
UI-9—Applicant's Statement of Employment and Wages .....	800	10	133
UI-23—Claimant's Statement of Service for Railroad Unemployment Insurance Benefits .....	600	5	50
UI-44—Claim for Credit for Military Service (RUIA) .....	150	5	13
ID-4F—Letter Advising of Ineligibility for RUIA Benefits .....	25	5	2
ID-4U—Letter Advising of Service/Earnings Requirements for RUIA Benefits .....	150	5	13
ID-4X—Letter Advising of Service/Earnings Requirements for Sickness Benefits .....	100	5	8
ID-4Y—Letter Advising of Ineligibility for Sickness Benefits .....	25	5	2
ID-20-1—Letter Advising that Normal Unemployment Benefits Are About to be Exhausted .....	50	5	4
ID-20-2—Letter Advising that Normal Sickness Benefits Are about to be Exhausted .....	100	5	8
ID-20-4—Letter Advising that Normal Sickness Benefits Are About to be Exhausted/Non-Entitlement .....	5	5	1
<b>Total .....</b>	<b>2,005</b>	<b>.....</b>	<b>234</b>

The renewal of this information collection will continue to RRB's initiative to consolidate information collections by major functional areas. The purpose of the initiative is to bring related collection instruments together in one collection, better manage the instruments, and prepare for the

electronic collection of this information. (A collection instrument can be an individual form, electronic collection, interview, or any other method that collects specific information from the public.

As part of the OMB renewal process, the RRB proposes that this collection

(OMB 3220-0025), Statements of Claimed Railroad Service and Earnings, be renamed RUTA Investigations and Continuing Entitlement. Upon approval by OMB, the RRB intends to merge the following OMB approved collections into this collection by the expected expiration date(s).

OMB Collection No. and Title	RRB Forms	Expected expiration date
3220-0049—Investigation of Claim for Possible Days of Employment or State Benefits Received.	ID-5T, ID-5R(SUP), ID-49R, UI-48 .....	8/31/2000
3220-0057—Placement Service .....	ES-2, ES-20a, ES-20b, ES-21, ES-21c, UI-35, & Job Vacancies Report.	6/30/2001
3220-0079—Certification Regarding Rights to Unemployment Benefits.	UI-45 .....	8/31/2002
3220-0164—Availability to Work .....	UI-38, UI-38s, ID-8k .....	5/31/2002
3220-0171—RUTA Claims Notification System .....	ID-4k .....	6/30/2002

Revisions to existing collection instruments and, occasionally, a new instrument related to this program function may be required during the three-year cycle of this information collection. The RRB currently estimates the completion time for Form ID-5I, Letter to Non-Railroad Employers on Employment and Earnings of a Claimant at 15 minutes, Form ID-5R(SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service at 10 minutes, Form ID-49R, Letter to Railroad Employer for Payroll Information at 15 minutes, Form UI-48, Claimant's Statement Regarding Benefit Claim for Days of Employment at 12 minutes, Form ES-2, Supplemental Information for Central Register at .25 minutes, Form ES-20a, Notice of Employment Referral at .75 minutes, Form ES-20b, Notice of Employment Referral (Employer) at .5 minutes, ES-21, Referral to State Employment Service, at .68 minutes, Form ES-21c, Report of State Employment Service Office at 1.5 minutes, Form UI-35, Field Office

Record of Claimant Interview at 7 to 10.5 minutes, the Railroad Job Vacancy Report at 10 minutes, Form UI-45, Claimant Statement, Voluntary Leaving of Work, at 15 minutes, Form UI-38, Claimant's Report of Efforts to Find Work at 11.5 minutes, Form UI-38s, School Attendance and Availability Questionnaire at 6 to 10 minutes, Form ID-8k, Letter to Union Representative at 5 minutes, and Form ID-4k, Prepayment Claims Verification Notice at 2 minutes.

After the last information collection is merged and other necessary adjustments are made, the resultant information collection is expected to total approximately 5,200 annual burden hours. A justification for each action described above (merge collection, revised collection instrument, new collection instrument) will be provided to OMB with a correction Change Worksheet (OMB Form 83-C) at the time the action occurs. With the next renewal of this collection, the RRB will update the information collection package to account for the consolidation and other interim adjustment.

**ADDITIONAL INFORMATION OR COMMENTS:**

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00-9514 Filed 4-14-00; 8:45 am]

**BILLING CODE 7905-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

**Request Under Review by Office of Management and Budget**

Upon Written Request Copies Available From Securities and Exchange

Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 22d-1, SEC File No. 270-275, OMB Control No. 3235-0310

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted for extension of OMB approval Rule 22d-1 under the Investment Company Act of 1940 ("Investment Company Act").

Rule 22d-1 [17 CFR 270.22d-1] provides registered investment companies that issue redeemable securities ("funds") an exemption from section 22(d) of the Investment Company Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. These conditions require that (1) the scheduled variation be applied uniformly to all offerees in the specified class; (2) existing shareholders and prospective investors be furnished adequate information concerning the scheduled variation, as prescribed in applicable registration statement form requirements; (3) the fund's prospectus and statement of additional information are revised to describe the new scheduled variation before any new sales load variation is made available to purchasers of fund shares; and (4) within one year of first making the scheduled variation available, existing shareholders are advised of any new sales load variation (items (2) through (4), collectively, "notice requirements"). The notice requirements of Rule 22d-1 are designed to ensure that all existing and prospective investors that may be eligible for a reduction or elimination of the sales load receive timely notice about it. The rule imposes an annual burden per fund of approximately 15 minutes, so that the total burden for the approximately 2,400 funds that might rely on the rule is estimated to be 600 hours.

The collection of information under Rule 22d-1 is mandatory. The information provided by Rule 22d-1 is not kept confidential. The Commission 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 estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not

derived from a comprehensive or even a representative survey or study.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 11, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-9484 Filed 4-14-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 6e-2, SEC File No. 207-177, OMB Control No. 3235-0177

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 6e-2 [17 CFR 270.6e-2] under the Investment Company Act of 1940 ("Act") is an exemptive rule which permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e-2 provides a separate account with an exemption from the registration provisions of section 8 of the Act if the account files with the Commission Form N-6EI-1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other series of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of Rule 6e-2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to Rule 6e-2.

Since 1997, there have been no filings under paragraph (b)(9) of Rule 6e-2 by management accounts. Further, all variable life separate accounts that have filed post-effective amendments to their registration statements during this period have been structured as unit investment trusts and thus have not been subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1997, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e-2.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 10, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-9485 Filed 4-14-00; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IC-24386; 812-11936]

**Van Wagoner Funds, Inc., et al.; Notice of Application**

April 10, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").**ACTION:** Notice of an application to amend an existing order under sections 6(c) and 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act permitting certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants seek to amend a prior order that permits existing and future series ("Portfolios") of the Van Wagoner Funds, Inc. (the "Company") and Van Wagoner Capital Management, Inc. ("Van Wagoner Capital Management") to co-invest in the same issuers of securities with each other and certain affiliates ("Prior Order").<sup>1</sup> The amended order ("Amended Order") would permit certain additional registered management investment companies advised by Van Wagoner Capital Management, or an entity controlling, controlled by or under common control with Van Wagoner Capital Management (collectively referred to as the "Adviser") (such companies, the "New Funds"), to rely on the Prior Order. The New Funds, together with the Portfolios, are referred to as "Funds."<sup>2</sup>

*Applicants:* The Company and the Adviser.

**FILING DATES:** The application was filed on January 18, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the 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 5, 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

<sup>1</sup> Van Wagoner Funds, Inc., Investment Company Act Release Nos. 23954 (Aug. 19, 1999 (notice) and 24012 (Sept. 14, 1999) (order).

<sup>2</sup> The Portfolios are the only funds that currently intend to rely on the Amended Order. Any Fund that relies on Amended Order in the future will comply with the terms and conditions of the application.

of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549-0609. Applicants: 345 California Street, San Francisco, California 94104.

**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, N.W., Washington, DC 20549-0102 (tel. 202-942-8090).

**Applicants' Representations**

1. The Company is registered under the Act as an open-end management investment company and currently offers seven Portfolios. Each Portfolio's investment objective is capital appreciation, and each Portfolio may invest up to 15% of its net assets in illiquid securities. Applicants state that substantially all of the illiquid securities held by the Portfolios are venture capital investments. The Adviser serves as investment adviser to each Portfolio and is registered under the Investment Advisers Act of 1940. A majority of the board of directors of the Company ("Board") are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"). A New Fund may be either an open-end or closed-end management investment company registered under the Act.

2. The Adviser or its affiliates ("Adviser Affiliates") also may serve as investment adviser to other private accounts on a discretionary basis and as general partner and/or investment adviser to other investment vehicles that are exempt from the Act under section 3(c)(1) or 3(c)(7) of the Act. These private accounts and vehicles, along with any similar entity created, advised, sponsored or otherwise organized by the Adviser or Adviser Affiliates are referred to as "Company Affiliates." When acting as the general partner of a Company Affiliate, the Adviser or Adviser Affiliates may make a capital contribution in connection with the organization of the Company Affiliate and maintain an interest in the gains, losses, income, and expenses of the Company Affiliate. The Adviser or Adviser Affiliates also may be required

to make a commitment to co-invest on a principal basis with a Company Affiliate in an amount up to 1% of the Company Affiliate's investment.

3. On September 14, 1999, the SEC issued the Prior Order to the applicants under section 6(c) and 17(d) of the Act and under rule 17d-1 under the Act permitting the applicants to co-invest in the same issuers of securities with each other and Company Affiliates. Applicants seek to amend the Prior Order to extend it to the New Funds. Applicants state that it may be beneficial for the Funds to be able to co-invest in certain venture capital investments with Company Affiliates. Applicants assert that co-investment in portfolio companies by the Funds and Company Affiliates would increase favorable investment opportunities for the Funds, consistent with the Funds' investment objectives, policies, and restrictions. Applicants state that these investment opportunities will not include investments in registered investment companies or entities relying on section 3(c)(1) or 3(c)(7) of the Act. Applicants also state that the co-investments will be treated as illiquid securities for purposes of the 15% limit on the open-end Funds' investment in illiquid securities.<sup>3</sup> Applicants also represent that the New Funds will comply with the conditions set forth below and will be bound by the terms and provisions of the Prior Order to the same extent as the applicants.

**Applicants' Legal Analysis**

1. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d-1 under the Act provides that in passing upon applications under section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and

<sup>3</sup> Applicants note that if a portfolio company subsequently becomes a publicly traded company, its shares held by the Funds may no longer be illiquid securities.

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under sections 6(c) and 17(d) of the Act and rule 17d-1 to permit the Funds to co-invest with other Funds, Company Affiliates, and the Adviser or Adviser Affiliates. Applicants state that the Adviser and Adviser Affiliates will co-invest with the Funds only if and to the extent required to do so by a Company Affiliate. Applicants state that the conditions to the requested order that will govern the co-investments will assure that the investments will be in the best interests of the participating Funds and consistent with the Funds' investment policies, and that the Funds will be participating in the co-investment on a basis that is no less advantageous than that of the other participants.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) To the extent that a Fund is considering new investments, the Adviser will review investment opportunities on behalf of the other Funds and investments being considered on behalf of any Company Affiliate, and, when required by a Company Affiliate, the Adviser. The Adviser will determine whether an investment being considered on behalf of a Company Affiliate ("Company Affiliate Investment") meets a Fund's investment objectives, policies, and restrictions and is otherwise eligible for investment by any of the Funds.

(b) If the Adviser deems a Company Affiliate Investment eligible for one or more Funds (a "co-investment opportunity"), the Adviser will determine what it considers to be an appropriate amount that each eligible Fund should invest. When the aggregate amount recommended for any Fund and that to be bought by other Funds, a Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, exceeds the amount of the co-investment opportunity, the amount invested by such Fund shall be based on the ratio of the net assets available for investment of that Fund to the aggregate net assets available for investment by any other Fund and the Company Affiliate (including the interest of the Adviser or Adviser Affiliate, if applicable) seeking to make the investment.

(c) Following the making of the determinations referred to in (a) and (b), the Adviser will distribute written information concerning all co-

investment opportunities to the Independent Directors. Such information will include the amount any other Fund, the Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, proposes to invest.

(d) Information regarding the Adviser's preliminary determinations will be reviewed by the Independent Directors. One or more Funds will co-invest with each other and/or with a Company Affiliate and, when required by a Company Affiliate, with the Adviser or Adviser Affiliate, only if a majority of the Independent Directors who have no direct or indirect financial interest in the transaction ("Required Majority") concludes prior to the acquisition of the investment that:

(i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of applicable Funds and do not involve overreaching of the Funds or such shareholders on the part of any person concerned;

(ii) the transaction is consistent with the interests of the shareholders of the applicable Funds and is consistent with the Fund's investment objectives and policies as recited in its registration statement and reports filed under the Act, and its reports to shareholders;

(iii) the investment by the Company Affiliates and, when required by a Company Affiliate, the Adviser Affiliate, would not disadvantage a Fund, and that participation by such Fund or Funds would not be on a basis different from or less advantageous than that of the Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate; and

(iv) the proposed investment by applicable Funds will not benefit the Adviser or any affiliated entity thereof, other than the Company Affiliate making the co-investment, provided, however that the Adviser (1) may continue to receive advisory and other fees from the Funds and the Company Affiliates and (2) may participate in any co-investment wherein the Adviser or Adviser Affiliate is required by a Company Affiliate to commit to co-invest in all direct investments with such entity in the amount of up to 1% of the investment of each such entity.

(e) Each of the Funds has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. No Fund will make an investment for its portfolio if any Company Affiliate or the Adviser or Adviser Affiliate is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition 5 below.

3. For any purchase of securities by one or more Funds in which a Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration rights shall be the same for each of the Funds and the Company Affiliate and the Adviser or Adviser Affiliate, if applicable, and the approval of such transactions, including the determination of the terms of the transactions by the Required Majority, will be made in the same time period.

4. If a Company Affiliate and/or the Adviser or Adviser Affiliate elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by one or more Funds, the Adviser will notify the applicable Funds of the proposed disposition at the earliest practical time and the Company will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those available to the Company Affiliate and/or the Adviser or Adviser Affiliate. The Adviser will formulate a recommendation as to participation by such Funds in such a disposition, to the extent that the Required Majority determines that it is in the Fund's best interest. Each of the Funds, the Adviser or Adviser Affiliate and the Company Affiliate will bear its own expenses associated with any such disposition of the portfolio security.

5. If a Company Affiliate desires to make a "follow-on" investment (*i.e.*, additional investment in the same entity) in a portfolio company whose securities are held by any of the Funds or to exercise warrants or other rights to purchase securities of such an issuer, the Adviser will notify the Funds of the proposed transaction at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by the applicable Fund in a follow-on investment and provide the recommendation to the Required Majority along with notice of the total amount of the follow-on investment. The Required Majority will make its own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the applicable Fund's, the Company Affiliate's, and, if applicable, the Adviser's or Adviser Affiliate's initial investments, the relative amount of investment by the Company Affiliate and, if applicable, the Adviser or Adviser Affiliate and the Company will be based on the ratio of the applicable Fund's remaining funds available for

investment to the aggregate of such Fund's and the Company Affiliate's (including the interest of the Adviser or Adviser Affiliate) remaining funds available for investment. The applicable Fund will participate in such investment to the extent that the Required Majority determines that it is in such Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Required Majority will be provided quarterly for its review all information concerning co-investment transactions, including investments made by the Adviser, Adviser Affiliate and Company Affiliates in which a Fund declined to participate, so that the Required Majority may determine whether all investments made during the preceding quarter, including those investments in which the Fund declined to participate, comply with the conditions of the order. In addition, the Required Majority will consider at least annually the continued appropriateness of the standards established for co-investment by a Fund, including whether the use of the standards continues to be in the best interest of the Funds and its shareholders and does not involve overreaching on the part of any person concerned.

7. Other than as provided in condition 1(d)(iv), neither the Adviser nor any Adviser Affiliate nor any director of the Funds will participate in a co-investment with the Funds unless a separate exemptive order with respect to such co-investment is obtained.

8. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the sponsorship of any portfolio company.

9. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the structuring of any portfolio company or of any security issued by any portfolio company, except that the Adviser may take part in the negotiation of the terms (such as coupon, final maturity, average life, sinking funds, conversion price, registration, put rights and call protection) and appropriate restrictive covenants governing the securities purchased in a co-investment transaction.

10. Each of the Funds will maintain and preserve all records that are required by section 31 of the Act and any other provisions of the Act and the rules and regulations under the Act applicable to the Funds. The Funds also will maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development

company and the co-investments and any follow-on investments were approved under section 57(f).

11. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will "make available significant managerial assistance," within the meaning of section 2(a)(47) of the Act, to any portfolio company whose securities were acquired pursuant to the requested order.

12. None of the Adviser, Adviser Affiliates, or Company Affiliates will receive any transaction fees (including, without limitation, monitoring, "topping," breakup, and termination fees) in connection with any investment made pursuant to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 00-9449 Filed 4-14-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42661; File No. SR-BSE-00-02]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Rescinding Chapter II, Section 23, Dealings on Other Exchanges, or Publicly Outside the Exchange

April 10, 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 March 9, 2000, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Exchange's ("NYSE") proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of

important issues that have broad implications for the structure of the U.S. securities markets.<sup>3</sup> Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.<sup>4</sup>

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rescind Chapter II, Section 23, "Dealings on Other Exchanges or Publicly Outside the Exchange," which will remove the Exchange's off-board trading restrictions. The text of the proposed rule change is available at the Exchange and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in 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 rescind its restrictions on off-board trading under

<sup>3</sup> See Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000) (File No. SR-NYSE-99-48). The Commission notes that similar proposals have been filed by the American Stock Exchange, Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex+00-05); the Chicago Stock Exchange, Securities Exchange Act Release No. 42459 (Feb. 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); the Philadelphia Stock Exchange, Securities Exchange Act Release No. 42458 (Feb. 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR-Phlx-00-12); and the Pacific Exchange, SR-PCX-00-11.

<sup>4</sup> The Commission notes that the NYSE Notice is available on the Commission's website at: <http://www.sec.gov/rules/sros/ny9948n.htm>.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Chapter II, Section 23, "Dealings on Other Exchanges or Publicly Outside the Exchange." Originally, Chapter II, Section 23 prohibited Exchange members from trading over-the-counter in certain securities. Off-board trading restrictions in general provided an additional incentive for members to purchase regional specialist units which promoted internalization of order flow and limited fragmentation.

However, the Commission narrowed the scope of exchange off-board trading restrictions by the adoption of Rules 19c-1 and 19c-3 under the Act.<sup>5</sup> Rule 19c-1 enabled Exchange members to execute agency trades with a market maker who is not an exchange member. Rule 19c-3 permits Exchange members to execute proprietary trades in securities listed after April 26, 1979. On a practical basis, the purchase of a regional specialist unit allowed a member firm to internalize its small retail order flow without violating an exchange's off-board principal trading restrictions.

The Exchange believes it is appropriate to rescind its restrictions on off-board trading at this time. Advances in the application of technology have resulted in the creation of new competitors to the regional exchanges, such as Alternative Trading Systems. As such, the Exchange recognizes the need for exchanges and their members to take part in the greater level of free market trading. The NYSE also filed to rescind NYSE Rule 390. In light of these developments (as well as the Commission's request that the Exchange review its restrictions on off-board trading), the Exchange now proposed to rescind Chapter II, Section 23.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>6</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

<sup>5</sup> 17 CFR 240.19c-1 and 17 CFR 240.19c-3.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approved such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.<sup>7</sup> 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office at the Exchange. All submissions should refer to File No. SR-BSE-00-02 and should be

<sup>7</sup> See supra notes 3 and 4.

submitted by May 8, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR-NYSE-99-48 and should be submitted by April 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-9486 Filed 4-14-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42657; File No. SR-CSE-99-05]

### Self-Regulatory Organizations; Order Approving the Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Cincinnati Stock Exchange Enabling Members To Trade Nasdaq/NM Securities

April 10, 2000.

#### I. Introduction

On December 10, 1999, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to enable its members to trade Nasdaq/NM securities.

The proposed rule change was published for comment in the **Federal Register** on January 27, 2000.<sup>3</sup> No comments were received on the proposal. On April 7, 2000, the Exchange submitted Amendment No. 1, making several technical changes to the proposed rule text.<sup>4</sup> This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The proposed rule change would amend the CSE Rules to permit members to trade Nasdaq/NM<sup>5</sup> securities traded on The Nasdaq Stock

<sup>8</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> Securities Exchange Act Release No. 42352 (January 20, 2000), 65 FR 4455.

<sup>4</sup> See letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Heather Traeger, Attorney, Division of Market Regulation, SEC, dated April 4, 2000 ("Amendment No. 1"). Because of the technical nature of this amendment, the Commission is not required to solicit comment on it.

<sup>5</sup> The Exchange amended the text of the proposed rule change to replace "NASDAQ" with "Nasdaq" *id.*

Market ("Nasdaq"), a wholly-owned subsidiary of the National Association of Securities Dealers ("NASD")<sup>6</sup> on an UTP basis.<sup>7</sup> The majority of the proposed rule change to Chapter XI, "Trading Rules," of the CSE rules relates to amendments to accommodate the trading of Nasdaq securities, however, certain changes are housekeeping in nature.

The proposed rule change would amend CSE Rule 11.1, "Hours of Trading" by converting the hours of trading on the Exchange from Cincinnati local time to Chicago local time and providing in subparagraphs (b) and (c) for the inclusion of Nasdaq securities in the determination of trading hours for dually or multiple-traded securities. The changes to CSE Rule 11.2, "Unit of Trading," would reflect the inclusion of Nasdaq securities in determining the appropriate unit of trading. Similarly, the proposed rule change would amend CSE Rule 11.4, "Trading Ex-Dividend, Etc.," and CSE Rule 11.5, "Orders to be Reduced and Increased on Ex-Date," to include Nasdaq securities in the exception language of the rules.

In CSE Rule 11.3, "Price Variations," the proposed rule change would amend the stated minimum variation to reflect the current primary market practice, *i.e.*  $\frac{1}{16}$  of \$1.00 per share in stocks trading at or above \$.50 per share and  $\frac{1}{32}$  of \$1.00 per share in stocks trading below \$.50 per share.<sup>8</sup> The changes would also include securities traded on Nasdaq in determining the appropriate variation. CSE Rule 11.7, "Cabinet Trading," would be amended to reflect that the CSE facilities are now located in Chicago, Illinois.

The proposed rule change would make a number of amendments to CSE Rule 11.9, "National Securities Trading System" ("System"). The amendments to subparagraph (a) would define the terms "Nasdaq/NM Security," "Nasdaq System," "Nasdaq System BBO" and include the term "national securities association" in the definition of "Approved Dealer." The changes to subparagraph (c) would add the term "Nasdaq System BBO" to the definition

of marketable limit order, except Nasdaq/NM securities from the opening guarantee of 1099 shares, and implement a Nasdaq/NM opening guarantee up to 1099 shares at an opening price that is on or between the first unlocked/uncrossed Nasdaq System BBO. The changes to subparagraph (e) would add specialists or market makers who are members of other national securities associations to the entities that may submit bids or offers to the System. The changes to subparagraph (h) would ensure that the System displays the Nasdaq System BBO generated by Nasdaq System market makers<sup>9</sup> and permits Nasdaq System market makers telephonic, or other such access to the System as may be established between the Exchange and the Nasdaq System, and conversely, permit Designated Dealers to send orders from the Exchange via telephone, or by other such access as may be established between the Exchange and the Nasdaq System, to Nasdaq market makers.

Subparagraph (j) of CSE Rule 11.9 would be amended to include the Nasdaq System and the Nasdaq System BBO in the prohibition of executing a limit order only after a regular way transaction occurs in another market at a price equal or inferior to the limit price of the order. The amendments to subparagraph (n) would clarify that the public agency guarantee for 1099 shares at the opening price applies to securities other than Nasdaq/NM securities. However, the public agency guarantee applies to those market and marketable limit orders prices better than the first unlocked/uncrossed Nasdaq System BBO. In addition, the amendments would add the Nasdaq System BBO to the obligations to execute on the basis of the ITS BBO. Finally, the amendments to this subparagraph clarify that the execution guarantees and requirements of CSE Rule 12.6, Customer Priority, apply during the hours of trading on the Exchange (8:30 a.m. to 3:05 p.m. local Chicago time).

The proper rule change would also amend the "Interpretations and Policies" section of CSE Rule 11.9 Interpretation and Policies Section .01. "Market Order Requirement," and .02, "Limit Order Protection Requirement," would be amended to reflect that the obligations of the interpretation apply to securities other than Nasdaq/NM securities.

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).<sup>10</sup> Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)<sup>11</sup> requirements in that the proposed standards to permit CSE members to trade NASDAQ/NM securities should promote just and equitable principles of trade and facilitate transactions in securities, thereby removing impediments to and perfecting the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.<sup>12</sup>

Furthermore, the proposed rule change is consistent with Section 12(f)(2) of the Act. Section 12(f)(2) granted the Commission explicit authority to approve UTP in OTC securities. Section 12(f)(2) requires the Commission, prior to approving UTP, to determine that the granting of UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposed rule change is consistent with these goals and thus, the Commission is approving the proposed rule change, subject to the CSE complying with the requirements of the UTP Plan.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-CSE-99-05), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-9489 Filed 4-14-00; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>6</sup> In Amendment No. 1, the Exchange clarified that the proposed rule change permits Exchange members to trade securities traded on Nasdaq, not securities traded on a "national securities association." *Id.*

<sup>7</sup> This filing is made in conjunction with the Exchange joining the Unlisted Trading Privileges Plan ("UTP Plan") governing the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities. See Securities Exchange Act Release No. 42269 (December 23, 1999), 65 FR 799 (January 6, 2000).

<sup>8</sup> The Exchange represents that these variations will be revisited in any proposed rule changes to accommodate decimal pricing.

<sup>9</sup> In Amendment No. 1, the Exchange clarified that the System does not generate but merely displays the Nasdaq System best bid or offer quotations generated and disseminated by the Nasdaq System. See Amendment No. 1, *supra* note 4.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42654; File No. SR-Phlx-00-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program To Impose Fees for Computer Equipment Services, Repairs or Replacements and Relocation of Computer Equipment

April 10, 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 March 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 29, 2000, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.<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 Phlx, pursuant to Rule 19b-4 of the Act, proposes to extend for a further three months its pilot program that requires all members on the options and equity trading floors to pay a fee for computer equipment services, repairs or replacements and a fee for member-requested relocation of computer equipment.<sup>4</sup> The Exchange proposes to extend the current pilot program, which expired on March 31, 2000, through June 30, 2000.<sup>5</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 to the proposed rule change made technical corrections to the Phlx's fee schedule. See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 29, 2000 ("Amendment No. 1").

<sup>4</sup> A fee is not charged for new installation of computer equipment. Fees also are not charged to participants on the foreign currency options trading floor.

<sup>5</sup> The Commission first approved the pilot program on December 23, 1999. See Securities Exchange Act Release No. 42271 (December 23, 1999), 65 FR 154 (January 3, 2000) (File No. SR-Phlx-99-45).

#### 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 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 Phlx has requested an extension through June 30, 2000 of a pilot program that amends the Exchange's fee schedule in two ways. First, pursuant to the current pilot program, the Phlx's schedule of dues, fees and charges was amended to impose a fee on all members on the options and equity floors for computer equipment services, repairs or replacements on the trading floors. Specifically, Phlx charges \$100 for every service calls plus \$75 an hour, with a minimum of two hours charged per service calls.<sup>6</sup> The Exchange anticipates that the majority of computer services, repairs or replacements will continue to be completed within two hours. Members are not billed for computer equipment services, repairs or replacements when new or refurbished, equipment fails in the normal and customary manner of usage within 30 days of installation.

The Exchange represents that these charges are intended to defray the cost of servicing, repairing or replacing computer equipment on the options and equity floors, as well as to encourage care in using the computer equipment.<sup>7</sup> The Exchange represents that the bulk of calls that are routinely received by its Financial Automation Department are requests to repair, replace or otherwise service computer equipment at options or equity floor members' work stations.<sup>8</sup>

Second, the Exchange has amended its schedule of dues, fees, and charges to also impose a fee for member-

<sup>6</sup> Some component of this amount may reflect Pennsylvania sales tax.

<sup>7</sup> This proposed fee will apply to all such requests with no distinction between intentional abuse and normal wear and tear due to the difficulties associated with categorizing the types of repairs.

<sup>8</sup> Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Susie Cho, Attorney, Division, Commission, March 30, 2000.

requested relocation of a member's work station or any piece of their computer equipment on the options or equity trading floor. Under the current pilot program, the Exchange imposes a \$100 service fee plus \$75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.<sup>9</sup> Members will continue to be billed on a monthly basis for computer equipment services, repairs or replacements and for member-requested relocations of computer equipment.

The Exchange represents that the post/equipment relocation fee will assist Phlx in defraying the costs associated with the moving of computer equipment. The relocations on the options and equity floors can be very time-consuming and costly since nearly all relocations take place after hours or on the weekends.

Under the current pilot program, Exchange staff and trading floor members complete a preprinted form prior to requesting repair or relocation service. A Notice to Members describing the equipment repair and relocation request procedures was sent to all floor members prior to the implementation of the current three-month pilot program that was in effect from January 1, 2000 through March 31, 2000. The procedures include instructions to members and Exchange staff as to where the service request forms are located, directions as to how to complete the form, and which department is required to forward the forms to the accounting department.

The Exchange proposes to extend the pilot program for an additional three months, through June 30, 2000. The Exchange asserts that an extension would allow it to fully review the fees and procedures that were implemented on January 1, 2000. The Exchange would have an opportunity to determine whether the fees for computer equipment services, repairs or replacements and member-requested relocation of computer equipment that are charged to members are appropriate and reflect the costs for these services that are incurred by the Exchange. An extension of the pilot program would further enable the Exchange to determine whether the fees relating to computer equipment services, repairs or replacements and member-requested relocation of computer equipment should be applied to similar situations to foreign currency options participants

<sup>9</sup> For example, if two individuals take two hours to relocate a work station, the member will be charged \$100 for the service call, plus \$300 for moving the equipment (i.e., \$75 × 4 (2 people × 2 hours)). Again, some component of this amount may reflect Pennsylvania sales tax.

on the foreign currency options trading floor. I would also give the Board of Governors the opportunity to decide whether this pilot program should be implemented on a permanent basis.

## 2. Statutory Basis

The Exchange believes that the proposed rule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange represents that the proposed rule change will impose no 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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder<sup>13</sup> because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, 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 change is consistent with the Act.<sup>14</sup> 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR-Phlx-00-24 and should be submitted by May 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42655; File No. SR-Phlx-00-25]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Eliminating the Restriction on Exercise Prices for FLEX Equity Call Options to Those Prices That Apply to Standardized Equity Call Options**

April 10, 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 March 15, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

#### **1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to delete the provision in Exchange Rule 1079(a)(3) that limits exercise prices for FLEX

equity call options to those that apply to standardized equity call options.<sup>3</sup>

## **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 amend Phlx Rule 1079(a)(3) to eliminate the limitation of the exercise prices available for FLEX equity call options to those prices that are available for standardized equity call options. Under Phlx Rule 1079, FLEX call options allow certain terms to be customized, such as the underlying security, the type of option, the exercise price, the exercise style, and the expiration date. The Exchange, however, restricted the strike prices for FLEX equity call options to those prices that are available for standardized equity call options because of a concern that the flexible strike price feature could result in an available standardized equity call option that would not be classified as a "qualified" covered call under the Internal Revenue Code ("Code"). The Exchange represents that this would jeopardize the modest tax treatment enjoyed by writers of standardized equity call options.

Currently under Section 1092(c)(4)(B) of the Code, writers of such qualified covered short positions in equity call options receive advantageous tax treatment if the options are exchange-traded and not "deep-in-the-money." An option is "deep-in-the-money" if the strike price of the option is lower than the lowest qualified benchmark price for stock.<sup>4</sup> The Code defines this benchmark price as generally the highest strike price available for trading

<sup>3</sup> The Commission notes that the proposed rule change would also eliminate the requirement that FLEX equity call options follow the exercise price intervals set out for standardized options in Phlx Rule 1012.

<sup>4</sup> Section 1092(c)(4)(C) of the Code.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78(s)(1).

<sup>2</sup> 17 CFR 240.19b-4.

that is less than the current price of the underlying stock.<sup>5</sup>

The Exchange implemented Phlx Rule 1079(a)(3) to remove uncertainty concerning what constitutes a qualified covered call under Section 1092(c)(4) of the Code. If the exercise prices of FLEX equity call options were not subject to the same prices and intervals that apply to standardized equity call options, this could raise the question of whether the existence of a series of FLEX equity call options with a strike price of, for example, \$58 when the price of the underlying stock is \$59, would disqualify a standardized equity call option with a strike price of \$55, which would otherwise be the lowest qualified benchmark price, *i.e.*, the highest strike price available for trading that is less than the price of the stock. The Exchange represents that it was concerned that the Internal Revenue Service ("IRS") may interpret the short covered standardized call equity option with a \$55 strike price as deep-in-the-money and not grant it qualified covered call treatment under Section 1092(c)(4) of the Code.

On January 25, 2000, the IRS resolved this question by issuing a final rule which states that strike prices established by the equity options with flexible terms will not be taken into account when determining whether standardized equity call options are deep-in-the-money and therefore do not receive qualified covered call treatment.<sup>6</sup> Therefore, the Exchange now proposes to modify Phlx Rule 1079(a)(3)(B) to lift the restriction on exercise prices for FLEX equity call options. The Exchange represents that the effect of the IRS regulations and the Exchange's proposal is to permit certain taxpayers, particularly institutional and other large Exchange's proposal is to permit certain taxpayers, particularly institutional and other large investors, to engage in transactions in FLEX equity call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Code for qualified covered call options involving equity call options with standard terms.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> in general, and furthers the objectives of Section

6(b)(6)(5)<sup>8</sup> in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by eliminating the restriction on FLEX equity call options that has limited their usefulness as a risk management tool.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx 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*

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder because the foregoing proposed rule change: (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 after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission accelerate the operative date of the proposed rule change so that the Exchange may implement this proposal as quickly as possible and allow FLEX options to be used as they were originally intended.

The Commission finds that it is appropriate to designate the proposal to become operative upon filing, because the immediate implementation of the proposed rule change is consistent with the protection of investors and the public interest. Specifically, the Commission previously approved virtually identical proposals by three

other exchanges.<sup>9</sup> The Commission notes that the proposed rule change concerns issues that have previously been the subject of a full comment period pursuant to Section 19(b) of the Act.<sup>10</sup> The Commission does not believe that the proposed rule change raises any new regulatory issues.<sup>11</sup>

The Commission also believes that immediate implementation of the proposed rule change is beneficial to investors. The Commission believes that the proposal allows sophisticated high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow these investors to manage their risks by having the ability to negotiate exercise prices, contact terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the adverse tax effect on qualified covered calls, the Exchange limited FLEX equity call options exercise prices to those prices available for standardized equity call options. Now that the tax issue has been clarified, the Exchange is removing this restriction. With the removal of this limitation, the Commission believes that sophisticated, high net-worth investors will better be able to take advantage of the risk-management mechanisms provided by FLEX equity call options.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interests, for the protection of investors or otherwise in furtherance of the purposes of the Act.<sup>12</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

<sup>9</sup> See Securities Exchange Act Release No. 42371 (January 31, 2000), 65 FR 5921 (February 7, 2000) (Order approving SR-CBOE-99-63); see also Securities Exchange Act Release No. 42389 (February 7, 2000), 65 FR 8224 (February 17, 2000) (Order approving SR-PCX-00-01 and SR-Amex-00-02).

<sup>10</sup> 15 U.S.C. 78s(b).

<sup>11</sup> The Commission notes that the discussion of the same restrictions on exercise price intervals and exercise prices for FLEX equity call options has been eliminated from the October 1996 Supplement to the Options Clearing Corporation options disclosure document. See Securities Exchange Act Release No. 42491 (March 2, 2000), 65 FR 13351 (March 13, 2000) (Order approving SR-ODD-00-01).

<sup>12</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> Section 1092(c)(4)(D) of the Code.

<sup>6</sup> See Department of Treasury, IRS REG-104641-97, 65 FR 3812 (January 25, 2000).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-00-25 and should be submitted by May 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-9488 Filed 4-14-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42659; Filed No. SR-PHlx-00-23]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Modify the Frequency of Billing for the Controller Space Charge, Floor Facilities Fees, Shelf Space Fee on the Equity Options Floor, and Direct Wire Changes From a Quarterly to a Monthly Basis

April 10, 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 March 9, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 22, 2000, the Exchange

submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges so that it will bill the controller space charge, floor facilities fees, shelf space fee on the equity options floor and direct wire charges on a monthly basis rather than the quarterly basis the Exchange currently uses. The amounts of the charges of fees will remain unchanged; only the frequency of billing for such fees or charges will change to a monthly basis. The Phlx proposes that the change in the frequency of billing for the fees or charges mentioned above become effective at the opening of business on April 1, 2000.

#### II. Self-Regulatory Organization's Statements 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. 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 amend the Phlx's fee schedule to change the frequency that Exchange members, foreign currency option ("FCO") participants and member organizations and participant organizations are billed for the controller space charge, floor facilities fees, shelf space fee for the equity options floor and the direct wire charges. The Exchange proposes to bill these fees or charges on a monthly basis, instead of on a quarterly basis.<sup>4</sup>

<sup>3</sup> In Amendment No. 1, the Exchange provided an updated schedule of dues, fees and charges in Appendix A to the proposed rule change. See Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, Dated March 21, 2000.

<sup>4</sup> The Exchange will bill the controller space charge at a rate of \$250.00 per month instead of the current rate of \$750.00 per quarter. The Exchange will bill the floor facilities fees and the shelf space fee at a rate of \$125.00 per month instead of the current rate of \$375.00 per quarter. The Exchange will bill the direct wire charges at a rate of \$20.00 per month instead of the current rate of \$60.00 per quarter.

The Exchange's Finance Committee is recommending that the fees or charges mentioned above be billed monthly instead of quarterly to enhance operational efficiency for the Exchange and its members and participants. The Exchange represents that the proposed rule change would permit the Exchange's Accounting Department to operate more effectively. The Exchange further represents that the proposed rule change would allow Exchange members and participants to more accurately gauge their monthly operating expenses, and to permit them to reduce their operational cash flow burdens that may result from the current quarterly payment schedule.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>5</sup> in general, and further the objectives of Section 6(b)(4)<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Specifically, the Exchange believes that the proposed rule change is reasonable and equitable because only the frequency of billing for the fees or charges mentioned above will be changed, and not the amount billed.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a fee, due or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder.<sup>8</sup> The Exchange intends to implement the change to the frequency of billing for the fees or charges mentioned above at the opening of business on April 1, 2000. At any time within 60 days of filing of such proposed rule change, the Commission may summarily abrogate such rule

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</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.

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 purpose 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 change is consistent with the Act.<sup>9</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-00-23 and should be submitted by May 8, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margared H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-9490 Filed 4-14-00; 8:45 am]

BILLING CODE 8010-01-M

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#### OFFICE OF SPECIAL COUNSEL

##### Proposed Information Collection Activities; Request for Comment

**AGENCY:** Office of Special Counsel.

**ACTION:** Notice.

**SUMMARY:** The U.S. Office of Special Counsel (OSC), in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and implementing regulations at 5 CFR Part 1320, plans to request approval from the Office of Management and Budget (OMB) for use of two previously approved information collections: (1) Form OSC-11, Complaint of Possible Prohibited Personnel Practice or Other Prohibited

Activity; and (2) Form OSC-12, Disclosure of Information. The forms to be submitted to OMB contain some modifications to the existing forms, including the addition of information about OSC jurisdiction. These collections of information are described in OSC regulations at 5 CFR 1800.1 and 1800.2. The current OMB approval for these collections of information expires on August 31, 2000.

Current and former Federal employees, employee representatives, other Federal agencies, and the general public are invited to comment on these information collections. Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of OSC's functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments should be received on or before June 16, 2000.

**ADDRESSES:** Kathryn Stackhouse, Attorney, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 300, Washington, DC 20036-4505.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Stackhouse, Attorney, Planning and Advice Division, at the address shown above; by telephone at (202) 653-8971; or by facsimile at (202) 653-5151. The collections of information to be submitted to OMB will be available for review on OSC's Web site (at [www.osc.gov](http://www.osc.gov)) as of the date of this notice.

**SUPPLEMENTARY INFORMATION:** Comment is requested on the following two collections of information:

1. *Title of Collection:* Complaint of Possible Prohibited Personnel or Other Prohibited Activity (Agency Form Number: OSC-11; OMB Control Number 3255-0002).

*Type of Information Collection:* Approval of a previously approved collection of information that expires on August 31, 2000. The proposed information collection format includes changes as follows: (1) Style, format, and other minor revisions that do not appear to impose significant new burdens, such as requests for fax numbers, e-mail addresses, and details of certain allegations in a different format; (2) addition of explanatory

information about OSC jurisdiction, elements required to prove some claims, and certain procedural rights; and (3) description of new and revised Privacy Act routine uses published after the prior OMB approval.

*Affected public:* Current and former Federal employees, applicants for Federal employment, and their representatives.

*Respondent's Obligation:* Voluntary.  
*Estimated Annual Number of Respondents:* 1802.

*Frequency:* On occasion.  
*Estimated Average Burden Per Respondent:* 1.25 hours. This estimated burden has changed from the previous estimate of one hour, due primarily to the addition of the explanatory information described above, under "Type of Information Collection."

*Estimated Annual Burden:* 2252.5 hours.

*Abstract:* This optional complaint form, or the format provided in 5 CFR 1800.1, is for use by current and former Federal employees and applicants for Federal employment to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC. In addition to a hard copy format, the form will be posted on OSC's Web site so that complainants can fill in the form online, and then print the completed form for signature and transmittal to OSC by mail or fax.

2. *Title of Collection:* Disclosure of Information (Agency Form Number: OSC-12; OMB Control Number 3255-0002).

*Type of Information Collection:* Approval of a previously approved collection of information that expires on August 31, 2000. The proposed information collection format includes changes as follows: (1) Style, format, and other minor revisions that do not appear to impose significant new burdens, such as requests for fax numbers, e-mail addresses, name of any legal or other representative, and classification of the type of disclosure; (2) addition of certification language before the signature of the submitter; (3) addition of explanatory information about OSC jurisdiction, processing criteria, and procedures; and (4) description of new and revised Privacy Act routine uses published after the prior OMB approval.

*Affected public:* Current and former Federal employees, applicants for Federal employment, and their representatives.

*Respondent's Obligation:* Voluntary.  
*Estimated Annual Number of Respondents:* 388.

<sup>9</sup>In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup>17 CFR 200.30-3(a)(12).

*Frequency:* On occasion.  
*Estimated Average Burden Per Respondent:* 1 hour.  
*Estimated Annual Burden:* 388 hours.  
*Abstract:* This optional whistleblower disclosure form, and the format provided in 5 CFR 1800.2, are for use by current and former Federal employees and applicants for Federal employment to disclose (for OSC review and possible referral to the agency involved) a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. In addition to a hard copy format, the form will be posted on OSC's Web site so that complainants can fill in the form online, and then print the completed form for signature and transmittal to OSC by mail or fax.

**Erin M. McDonnell,**  
*Associate Special Counsel for Planning and Advice.*

[FR Doc. 00-9448 Filed 4-14-00; 8:45 am]

**BILLING CODE 7405-01-U**

## DEPARTMENT OF STATE

[Public Notice 3289]

### Office of Visa Services; 30-Day Notice of Proposed Information Collection; Application for A, G, or NATO Visa, Form DS-1648

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Reinstatement of Form.

*Originating Office:* CA/VO.

*Title of Information Collection:* Application for A, G, or NATO Visas.

*Frequency:* Once.

*Form Number:* DS-1648.

*Respondents:* Foreign Applicants.

*Estimated Number of Respondents:* 20,000.

*Average Hours Per Response:* .5 hours.

*Total Estimated Burden:* 10,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Copies of the proposed information collection and supporting documents may be obtained from Daria Darnell, 2401 E Street NW, Rm L-703, Tel: 202-663-1253, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395-5871.

Dated: March 22, 2000.

**Nancy Sambaiew,**

*Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs.*

[FR Doc. 00-9530 Filed 4-14-00; 8:45 am]

**BILLING CODE 4710-06-U**

## DEPARTMENT OF STATE

[Public Notice 3288]

### Office of Visa Services; 30-Day Notice of Proposed Information Collection; Supplemental Registration for Diversity Immigrant Visa Program, Form DSP-122

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Reinstatement of Form.

*Originating Office:* CA/VO/F/P.

*Title of Information Collection:* Supplemental Registration for Diversity Immigrant Visa Program.

*Frequency:* Once per applicant.

*Form Number:* DSP-122.

*Respondents:* Foreign Applicants.

*Estimated Number of Respondents:* 90,000.

*Average Hours Per Response:* .5 hours.

*Total Estimated Burden:* 45,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Copies of the proposed information collection and supporting documents may be obtained from Daria Darnell, 2401 E Street NW, Rm L-703, Tel: 202-663-1253, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395-5871.

Dated: March 27, 2000.

**Nancy Sambaiew,**

*Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs.*

[FR Doc. 00-9531 Filed 4-14-00; 8:45 am]

**BILLING CODE 4710-06-U**

## DEPARTMENT OF STATE

[Public Notice 3290]

### Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

**EFFECTIVE DATE:** March 7, 20, and 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703 875-6644).

**SUPPLEMENTARY INFORMATION:** Section 38(e) of the Arms Export Control Act

mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: April 11, 2000.

**William J. Lowell,**

*Director, Office of Defense Trade Controls.*

*Speaker of the House of Representatives.*

March 7, 2000.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount \$50,000,000 or more.

The transaction contained in the attached certification involves the follow-on technical assistance agreements with Russia beyond those addressed in DTC 39-98, dated March 19, 1998 and DTC 98-99, dated August 5, 1999, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 014-00.

The Honorable J. Dennis Hastert,

The Honorable J. Dennis Hastert,

*Speaker of the House of Representatives.*

March 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount \$50,000,000 or more.

The transaction contained in the attached certification involves the design, manufacture, launch and support of a mobile commercial communications satellite for Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 019-00.

The Honorable J. Dennis Hastert,  
Speaker of the House of Representatives.

March 20, 2000.

Dear Mr. Speaker: Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of proposed Technical Assistance Agreements and Manufacturing License Agreements with Russia.

The transactions described in the attached certification involve the manufacture in Russia and the United States of RD-180 two-chamber rocket motors for use on Atlas launch vehicles, including the USAF Evolved Expendable Launch Vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DTC 125-99.

[FR Doc. 00-9532 Filed 4-17-00; 8:45 am]

**BILLING CODE 4710-25-U**

## DEPARTMENT OF STATE

[Public Notice 3287]

### Culturally Significant Objects Imported for Exhibition Determinations: "The Impressionists at Argenteuil"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "The Impressionists at Argenteuil," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about May 28 to August 20, 2000. And the Wadsworth Atheneum Museum of Art, Hartford, CT, from on or about September 6 to December 3, 2000 is in

the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619-6982). The address is U.S. Department of State, SA-44; 301-4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: April 3, 2000.

**William B. Bader,**

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

[FR Doc. 00-9529 Filed 4-14-00; 8:45 am]

**BILLING CODE 4710-08-U**

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1518).

**TIME AND DATE:** 9 a.m. (CDT), April 19, 2000.

**PLACE:** Pontotoc Electric Power Association, Conference Room, 12 South Main Street, Pontotoc, Mississippi.

**STATUS:** Open.

### Agenda

Approval of minutes of meeting held on March 29, 2000.

#### *New Business*

#### B—Purchase Award

B1. Contract with Merck-Medco Managed Care, L.L.C., for use of retail and mail pharmacy networks, claims/benefits management, and cost containment services.

#### C—Energy

C1. Contract with Holtec International, Inc., for design and construction of an independent spent fuel storage installation and dry cask storage system for Sequoyah Nuclear Plant.

C2. Supplement to Contract No. 99NNQ-251786-001 with Siemens Westinghouse to add rewinding the Browns Ferry Unit 2 main generator to the contract's scope.

C3. Contracts with Numanco, LLC; Canus Corporation; Westaff; and J. Givoo Consultants, Inc., for instrument mechanic services and with Numanco, LLC, for health physics personnel.

C4. Supplement to Contract No. 98P6D-195379 with General Electric Company for the manufacture and turnkey installation of eight 85-MW

simple cycle dual fuel combustion turbine generating units for the year 2002 peaking power.

#### E—Real Property Transactions

E1. Abandonment of flowage easement rights above the 820-foot contour affecting approximately 0.5 acre of land in Montgomery Cove Subdivision on Fort Loudoun Reservoir in Knox County, Tennessee (Tract No. FL-215F).

E2. Modification of certain deed conditions affecting approximately 7 acres of former TVA land (Tract No. XNR-56) on Norris Reservoir in Campbell County, Tennessee, in exchange for 8 acres of shore land on Norris Reservoir (Tract No. NR-5474), difference in value, and administrative and shoreline restoration costs associated with this modification.

*For more information:* Please call TVA Public Relations at (423) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999. People who plan to attend the meeting and have special needs should call (865) 632-6000.

Dated: April 12, 2000.

**Edward S. Christenbury,**

*General Counsel and Secretary.*

[FR Doc. 00-9642 Filed 4-13-00; 2:15 pm]

**BILLING CODE 8120-08-M**

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## DEPARTMENT OF TRANSPORTATION

### Notice of Request for Extension of a Currently Approved Information Collection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's DOT's intention to request an extension for a currently approved information collection.

**DATES:** Comments on this notice must be received by June 16, 2000.

**ADDRESSES:** Comments should be sent to the EAS and Domestic Analysis Division (X-53), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luther Dietrich or Mr. Dennis DeVany, Office of the Secretary, Office of Aviation Analysis, X-53, Department of Transportation, at the address above. Telephone: (202) 366-1046/1061.

#### SUPPLEMENTARY INFORMATION:

*Title:* Air Carrier's Claim for Subsidy and Air Carrier's Report of Departures Flown in Scheduled Service.

*OMB Control Number:* 2106-0044.

*Expiration Date:* September 30, 2000.

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

*Abstract:* In 14 CFR 271 of its Aviation Economic Regulations, the Department provided that subsidy to air carriers for providing essential air service will be paid to the carriers monthly, and that payments will vary according to the actual amount of service performed during the month. The reports of subsidized air carriers of essential air service performed on the Department's Forms 397, "Air Carrier's Report of Departures Flown in Schedule Service" (formerly "Air Carrier's Report of Revenue/Seat Miles Flown in Scheduled Service"), and 398, "Air Carrier's Claim for Subsidy," establish the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized air carriers to submit their monthly claims in a concise, orderly, easy-to-process form, without having to devise their own means of submitting support for these claims.

The collection involved here requests only information concerning the subsidy-eligible flights (which generally constitute only a small percentage of the carriers' total operations) of a small number of air carriers. The collection permits the Department to timely pay air carriers for providing essential air service to certain eligible communities that would not otherwise receive scheduled passenger air service.

*Respondents:* Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

*Estimated Number of Respondents:* 21.

*Average Annual Burden per Respondent:* 278 hours.

*Estimated Total Burden on Respondents:* 5,838 hours.

This information collection is available for inspection at the EAS and Domestic Analysis Division (X-53), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR 271 can be obtained from Mr. Luther Dietrich at the address and telephone number shown above.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper functioning of the Department, including whether

the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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

Issued in Washington, DC, on April 11, 2000.

**Randall D. Bennett,**

*Acting Director, Office of Aviation Analysis.*

[FR Doc. 00-9552 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-62-P**

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket OST-99-6150]

#### Application of Smokey Bay Air, Inc., for Certificate Authority

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of order to show cause (Order 2000-4-7).

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Smokey Bay Air, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail using no more than three aircraft with no more than nine passengers seats each.

**DATES:** Persons wishing to file objections should do so no later than April 27, 2000.

**ADDRESSES:** Objections and answers to objections should be filed in the Docket OST-99-6150 and addressed to the Department of Transportation Dockets, US Department of Transportation, 400 Seventh Street, SW., Room PL-401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: April 10, 2000.

**Robert S. Goldner,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 00-9403 Filed 4-14-00; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[USCG-2000-7221]

#### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115-0578, 2115-0592, 2115-0625, 2115-0563, 2115-0542, 2115-0135, 2115-0624, and 2115-0106

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of OMB for the renewal of eight Information Collection Requests (ICRs). These ICRs comprise: (1) Small Passenger Vessels—Title 46 CFR Subchapters K and T; (2) Offshore Supply Vessels—46 CFR Subchapter L; (3) Customer Satisfaction Surveys; (4) Nondestructive Testing Proposal and Results for Pressure Vessel Cargo Tanks on Unmanned Barges; (5) Station Bills for Manned Outer Continental Shelf Facilities; (6) Display of Fire Control Plans for Vessels; (7) Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 Amendments; and (8) Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

**DATES:** Comments must reach the Coast Guard on or before June 16, 2000.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG-2000-7221], U.S. Department of Transportation (DOT), room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

The Docket Management Facility maintains the public docket for these requests. Comments will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

Copies of the complete ICRs are available through this docket on the Internet at <http://dms.dot.gov> and also from Commandant (G-SII-2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593-0001. The telephone number is 202-267-2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202-267-2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-9330, for questions on the docket.

#### Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG-2000-7221] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

#### Information Collection Requests

1. **Title:** Small Passenger Vessels—Title 46 CFR Subchapters K and T.

**OMB Control Number:** 2115-0578.

**Summary:** The reporting and recordkeeping requirements are necessary for the proper administration and enforcement of the program on small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

**Need:** Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribed requirements for the design, construction, alteration, repair, and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

**Respondents:** Owners and operators of small passenger vessels.

**Frequency:** On occasion.

**Burden:** The estimated burden is 436,173 hours annually.

2. **Title:** Offshore Supply Vessels—46 CFR Subchapter L.

**OMB Control Number:** 2115-0592.

**Summary:** 46 U.S.C. 3305 and 3306 authorize the Coast Guard to prescribe

safety regulations. Title 46 CFR Subchapter L promulgates marine safety regulations for offshore supply vessels (OSV).

**Need:** The OSV requirements for posting and marking are necessary to provide instructions to those on board of actions to take in an emergency. The recordkeeping requirements verify compliance with regulations without CG presence to witness routine matters.

**Respondents:** Owners and operators of vessels.

**Frequency:** On occasion.

**Burden:** The estimated burden is 5,931 hours annually.

3. **Title:** Customer Satisfaction Surveys.

**OMB Control Number:** 2115-0625.

**Summary:** Executive Order 12862 authorizes the Coast Guard to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

**Need:** Putting people first means ensuring that the Federal Government provides the highest-quality service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public shall seek to meet established standards of customer service and shall:

- Identify the customers who are, or should be, served by the agency; and
- Survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

**Respondents:** Recreational boaters, commercial mariners, industry groups, State and local governments.

**Frequency:** On occasion.

**Burden:** The estimated burden is 4,712 hours annually.

4. **Title:** Nondestructive Testing Proposal and Results for Pressure Vessel Cargo Tanks on Unmanned Barges.

**OMB Control Number:** 2115-0563.

**Summary:** The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Once every ten years it subjects such a tank, on an unmanned barge, 30 years old or older to nondestructive testing.

**Need:** Under 46 U.S.C. 3703, the Coast Guard is responsible for ensuring safe shipment of liquid dangerous cargoes and has promulgated rules for certain barges to ensure the meeting of safety standards.

**Respondents:** Owners of tank barges.

**Frequency:** Every 10 years.

**Burden:** The estimated burden is 84.5 hours annually.

5. *Title:* Station Bills for Manned Outer Continental Shelf Facilities.

*OMB Control Number:* 2115-0542.

*Summary:* 43 U.S.C. 1333(d)

authorizes the Coast Guard to issue safety requirements for Outer Continental Shelf (OCS) activities. 33 CFR 146.130 promulgates the rules for Station Bills.

*Need:* Station Bills on manned OCS facilities are necessary to promote safety of life on these facilities. They are an efficient means for disseminating information to all persons on OCS facilities regarding their duties, duty stations, and signals used during emergencies and drills.

*Respondents:* Operators of OCS facilities.

*Frequency:* On occasion.

*Burden:* The estimated burden is 526 hours annually.

6. *Title:* Display of Fire Control Plans for Vessels.

*OMB Control Number:* 2115-0135.

*Summary:* This information collection is for the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aids firefighters and damage-control efforts in response to emergencies.

*Need:* Under 46 U.S.C. 3305 and 3306, the Coast Guard is responsible for ensuring the safety of inspected vessels and has promulgated rules to ensure the meeting of safety standards.

*Respondents:* Owners and operators of vessels.

*Frequency:* On occasion.

*Burden:* The estimated burden is 798 hours annually.

7. *Title:* Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 Amendments.

*OMB Control Number:* 2115-0624.

*Summary:* This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

*Need:* 46 U. S. C. Chapter 71 authorizes the Coast Guard to issue rules on licensing merchant mariners. 46 CFR Subchapter B prescribes the regulations.

*Respondents:* Owners and operators of vessels, training institutions, and mariners.

*Frequency:* On occasion.

*Burden:* The estimated burden is 18,331 hrs annually.

8. *Title:* Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

*OMB Control Number:* 2115-0106.

*Summary:* The Coast Guard reviews plans and records to determine whether

foreign tank vessels comply with applicable standards of design and construction.

*Need:* 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules on tank vessels for preventing pollution. 33 CFR part 157, Subpart B, contain regulations governing design of tank vessels.

*Respondents:* Owners and operators of vessels.

*Frequency:* On occasion.

*Burden:* The estimated burden is 65 hours annually.

Dated: March 29, 2000.

**Daniel F. Sheehan,**

*Director of Information and Technology.*

[FR Doc. 00-9408 Filed 4-14-00; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Deadline for Submission of Application Under the Airport Improvement Program (AIP) for Fiscal Year 2000 for Sponsor Entitlement and Cargo Funds

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces June 1, 2000, as the deadline for each airport sponsor to have on file with the FAA an acceptable fiscal year 2000 grant application for funds apportioned to it under the AIP.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stan Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP-520, on (202) 267-8809.

**SUPPLEMENTARY INFORMATION:** Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). Notifications of the sponsor's intent to apply during fiscal year 2000 for any of its available entitlement funds including those unused from prior years, shall be in the form of a project application submitted to the cognizant FAA Airports office no later than June 1, 2000.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by June 1, 2000, FAA will defer an airport's entitlement funds until the next fiscal year.

Pursuant to the authority and limitations in section 47117(f), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2000.

Issued in Washington, DC on April 11, 2000.

**D. Cameron Bryan,**

*Acting Manager, Programming Branch.*

[FR Doc. 00-9550 Filed 4-14-00; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application 00-03-C-00-MCI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kansas City International Airport, Kansas City, Missouri

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

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

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Russell C. Widmar, AAE, Director of Aviation, Kansas City International Airport, at the following address: 601 Brasilia Avenue, Kansas City, Missouri 64153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kansas City International Airport, under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mark Schenkelberg, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329-2645. The application

may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 31, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Kansas City International Airport, Kansas City, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 29, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* August 1, 2009.

*Proposed charge expiration date:* May 1, 2013.

*Total estimated use revenue:* \$89,911,790.

*Total estimated impose revenue:* \$99,645,586.

*Brief description of proposed project(s):* Terminal. Equipment, Airfield Lighting Generator, Relocate Airfield Generator, Overlay Runway 1/19.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kansas City International Airport.

Dated: Issued in Kansas City, Missouri on March 31, 2000.

**George A. Hendon,**

*Manager, Airports Division, Central Region.*

[FR Doc. 00-9551 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Orlando International Airport (MCO), Orlando, FL

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at MCO under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

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

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to C.W. Jennings, Executive Director of Greater Orlando Aviation Authority (GOAA) at the following address: Orlando International Airport, One Airport Boulevard, Orlando, Florida 32827-4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to GOAA under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pablo G. Auffant, P.E., Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812-6331, extension 30. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at MCO under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 7, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by GOAA was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 27, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00-08-C-00-MCO.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* August 1, 2007.

*Proposed charge expiration date:* June 1, 2013.

*Total estimated PFC revenue:* \$253,632,770.

*Brief description of proposed project(s):* South Terminal Complex Construction; Heintzelman Boulevard, Southern End Construction.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at GOAA.

Issued in Orlando, Florida on April 7, 2000.

**W. Dean Stringer,**

*Manager, Orlando Airports District Office, Southern Region.*

[FR Doc. 00-9407 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Allegheny County, Pennsylvania

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in the City of Pittsburgh and the Borough of Millvale in Allegheny County, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:**

David W. Cough, P.E., Operations Group

Leader, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 536, Harrisburg, PA 17101-1720, Telephone: (717) 221-3411  
OR

William Gibson, P.E., Project Manager, Pennsylvania Department of Transportation, District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017, Telephone: (412) 429-4930.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for the reconstruction and widening of State Route 28 including improvements to the intersections of State Route 28 and the 31st Street

Bridge and State Route 28 and the 40th Street Bridge. The proposed action would extend from Heinz Street in the City of Pittsburgh, to the Millvale Interchange in the Borough of Millvale. The length of the project is 3.3 kilometers (2.0) miles. Included in the overall project will be the identification of a range of alternatives that meet the identified project need, and supporting environmental documentation and analysis to recommend a selected alternative for implementation. A complete public involvement program is part of the project.

Documentation of the need for the project was completed in 1997. This process identified the need for roadway improvements through the study area based on local and regional transportation demand, system linkage and continuity, geometric criteria, safety and local and regional planning.

Alternatives that will be considered include: No Build; Widen left on existing alignment to bring roadway to freeway standards; Widen right on existing alignment to bring roadway to freeway standards; Widening alternative that combines widening left and right to bring roadway to freeway standards; and Improvements resulting in non-standard freeway design features. A number of intersection and interchange alternatives at the 31st Street and 40th Street Bridges will be studied. These alternatives will be the basis for recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations and citizens who express interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program)

**James A. Cheatham,**

*FHWA Division Administrator, Harrisburg, PA.*

[FR Doc. 00-9517 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-22-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Mason County, Washington

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA hereby gives notice that it intends to prepare an environmental impact statement (EIS) for a proposed highway project in Mason County, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Leonard, Transportation and Environmental Engineer, Federal Highway Administration, 711 Capitol Way, Suite 501, Olympia, WA 98501, Telephone: (360) 753-9408; or Mr. Jerry W. Hauth, Mason County Director of Public Works, Courthouse Bldg 1, 411 North 5th Street, PO Box 1850, Shelton, WA 98584, Telephone: (360) 427-9670.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

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.access.gpo.gov/nara>.

##### Background

The FHWA, in cooperation with the Washington State Department of Transportation and Mason County, will prepare an EIS to design, acquire land, and construct highway connector from SR 3 (south of Belfair, near the Location of the North Mason High School) to US 101 (north of Shelton). Access between the communities of Belfair and Shelton is currently provided by SR 3 and SR 106. Both of these are narrow two-lane farm-to-market routes that follow the shoreline on each side of the peninsula. All of the regional county roads feed into these two state highways. Congestion is already a concern during peak commuter hours and there are several high accident locations in the region. The high number of residential access points along all of SR 106 and

section of SR 3 exacerbate the safety problem. In addition, both routes are subject to frequent landslides, and are constrained by steep topography, marine shorelines and limited right of way. Currently adopted traffic projections show that all of the major county road intersections on SR 3, and most of mainline SR 3 will fall below acceptable levels of service standards before the year 2020. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand.

The EIS will include an evaluation of the no build alternative, as well as improvements to the existing highways and several practicable alignment alternatives for possible new connector routes.

The EIS will examine the short and long-term impacts on both the natural and physical environment. The impact assessment will include, but not limited to, impacts on wetlands, wildlife, and fisheries; social environment; changes in lands use; aesthetics; change in traffic; and economic impacts. The EIS will also examine measures to mitigate significant adverse impacts that may result from the proposed action.

Comments are being solicited from appropriate Federal, State, and local agencies, and from private organizations and citizens, who have interest in this proposal. Public information meetings will be held in the area as part of the scoping process to discuss public concerns and suggestions about the project. An agency scoping meeting will also be scheduled to discuss agency concerns. The draft EIS will be available to public and agency review prior to the public hearing which will be scheduled to receive comments. Public notice will be given of the time and place of all meeting and hearings.

Comments and/or suggestions from all interested parties are requested to ensure that the full range of all issues, and significant environmental and social issues in particular, are identified, reviewed and addressed. Comments and questions concerning this proposed action and/or its EIS should be directed to the FHWA or Mason County at the address listed above.

(Catalog of Federal domestic Assistant Programs Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on April 5, 2000.

**James A. Leonard,**

*Transportation & Environmental Engineer,  
Olympia, WA.*

[FR Doc. 00-9518 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-22-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Proposed Agency Information Collection Activities; Comment Request

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

**ACTION:** Notice and request for  
comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on January 26, 2000 (65 FR 4297).

**DATES:** Comments must be submitted on or before May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6133). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On January 26, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 4297. FRA received no comments after issuing this

notice. Accordingly, DOT announces that these information collection activities have been reevaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Control of Alcohol and Drug Use in Railroad Operations

*OMB Control Number:* 2130-0526

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads

*Form(s):* FRA F 6180.73; 6180.74; 6180.94A and 6180.94B

*Abstract:* The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information "evidence of unauthorized alcohol and drug use" is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System (MIS) annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

*Annual Estimated Burden Hours:* 129,366 hours

**ADDRESSES:** Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC, 20503; Attention: FRA Desk Officer.

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501-3520.

Issued in Washington, DC.

**Margaret B. Reid,**

*Acting Director, Office of Information  
Technology and Support Systems, Federal  
Railroad Administration.*

[FR Doc. 00-9547 Filed 4-14-00; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

**ACTION:** Notice and request for  
comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Annual Firearms Manufacturing and Exportation Report.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and

Firearms, Linda Barnes, 650  
Massachusetts Avenue, NW.,  
Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Smith, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8310.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Firearms Manufacturing and Exportation Report.

*OMB Number:* 1512-0030.

*Form Number:* ATF F 5300.11.

*Abstract:* ATF collects this data for the purposes of law enforcement, fitness qualification, congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act (26 U.S.C. 5801-5872) are met. The record retention requirement for this information collection is 98 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 1,500.

*Estimated Time Per Respondent:* 45 minutes.

*Estimated Total Annual Burden Hours:* 1,125.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9494 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Alternate Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8230.

**SUPPLEMENTARY INFORMATION:**

*Title:* Alternate Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

*OMB Number:* 1512-0466.

*Recordkeeping Requirement ID Number:* ATF REC 5170/7.

*Abstract:* When an exporter seeks to use an alternate method or procedure or an emergency variation from regulatory requirements of 27 CFR Part 252, such exporter requests a variance by letter, following the procedure in 252.20. ATF uses the information to determine if the requested variance is allowed by statute and does not pose a jeopardy to the revenue. The applicant is informed of

the approval or disapproval of the request. ATF also uses the information to analyze what changes should be made to existing regulations. Records must be maintained only while the applicant is using the authorization.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 200.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9495 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants (DSP)—Transaction and Supporting Records.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC (202) 927-8183.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distilled Spirits Plant (DSP)—Transaction and Supporting Records.

*OMB Number:* 1512-0250.

*Recordkeeping Requirement ID Number:* ATF REC 5110/5.

*Abstract:* Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by ATF to verify those accounts and consequent tax liabilities. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 278.

*Estimated Time Per Respondent:* 22 hours.

*Estimated Total Annual Burden Hours:* 6,060.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9496 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Multiple Sale or Other Disposition of Pistols and Revolvers .

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Forest G. Webb Sr., Bureau of Alcohol, Tobacco and Firearms, National Tracing Center, 1-800-788-7133.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

*OMB Number:* 1512-0006.

*Form Number:* ATF F 3310.4.

*Abstract:* This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

*Current Actions:* There are no changes to this information collection and it is

being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 10,000.

*Estimated Time Per Respondent:* 12 minutes.

*Estimated Total Annual Burden Hours:* 8,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9497 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the

Distilled Spirits Plants Warehousing Records and Reports.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distilled Spirits Plants Warehousing Records.

*OMB Number:* 1512-0192.

*Form Number:* ATF F 5110.11.

*Recordkeeping Requirement ID Number:* ATF REC 5110/02.

*Abstract:* The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis. The record retention period is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 230.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 5,520.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9498 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Alcohol Labeling and Formulation Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8116.

**SUPPLEMENTARY INFORMATION:**

*Title:* Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).

*OMB Number:* 1512-0204.

*Form Number:* ATF F 5110.38.

*Abstract:* ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made and restrictions to the label and/or manufacturing process. The form is

used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations. Records are kept indefinitely for this information collection.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 4,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9499 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Registration and Records of Vinegar Vaporizing Plants.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Registration and Records of Vinegar Vaporizing Plants.

*OMB Number:* 1512-0462.

*Recordkeeping Requirement ID*

*Number:* ATF REC 5110/9.

*Abstract:* Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9500 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Labeling of Sulfites in Alcoholic Beverages.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Edward A. Reisman, Alcohol Labeling and Formulation Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8485.

**SUPPLEMENTARY INFORMATION:**

*Title:* Labeling of Sulfites in Alcoholic Beverages.

*OMB Number:* 1512-0469

*Abstract:* In accordance with our consumer protection responsibilities, as mandated by law, ATF requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites. Sulfiting agents have been shown to produce allergic-type responses in humans, particularly asthmatics, and the presence of these

ingredients in alcohol beverages may have serious health implications for those who are intolerant of sulfites. Disclosure of sulfites on labels of alcohol beverages will minimize their exposure to these ingredients.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 4,787.

*Estimated Time Per Respondent:* 40 minutes.

*Estimated Total Annual Burden Hours:* 3,159.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000,

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9501 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Transfer of Spirits and/or Denatured Spirits in Bond.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application For Transfer of Spirits and/or Denatured Spirits in Bond.

*OMB Number:* 1512-0191.

*Form Number:* ATF F 5100.16.

*Abstract:* ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond. Records are kept as long as the approved application remains in effect.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 250.

*Estimated Time Per Respondent:* 12 minutes.

*Estimated Total Annual Burden Hours:* 300.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 17, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9502 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Recordkeeping Requirements for Importers of Tobacco Products.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Recordkeeping Requirements for Importers of Tobacco Products.

*OMB Number:* 1512-0555.

*Abstract:* Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare ATF F 5220.6, a importers monthly report. The records will be maintained to allow ATF officers

to trace tobacco product transactions and determine that tax liabilities have been accurately determined and discharged by the importers. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,500.

*Estimated Time Per Respondent:* None (Recordkeeping requirements involve usual and customary business records).

*Estimated Total Annual Burden Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9503 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants, Excise Taxes.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distilled Spirits Plants, Excise Taxes.

*OMB Number:* 1512-0203.

*Recordkeeping Requirement ID*

*Number:* ATF REC 5110/06.

*Abstract:* The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 133.

*Estimated Time Per Respondent:* 26 hours.

*Estimated Total Annual Burden Hours:* 3,458.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9504 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plant (DSP) Denaturation Records and Reports.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distilled Spirits Plant (DSP) Denatured Records and Reports.

*OMB Number:* 1512-0207.

*Form Number:* ATF F 5110.43.

*Recordkeeping Requirement ID*

*Number:* ATF REC 5110/04.

*Abstract:* This information collection is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile

statistics for government economic planning. The record retention requirement for this information collection is 4 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 98.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 1,176.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9505 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Equipment and Structures.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**  
*Title:* Equipment and Structures.  
*OMB Number:* 1512-0460.

*Recordkeeping Requirement ID Number:* ATF REC 5110/12.

*Abstract:* Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and of the accurate determination of contents. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 281.

*Estimated Time Per Respondent:* 0.

*Estimated Total Annual Burden*

*Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9506 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Certification of Tax Determine, Wine.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

#### SUPPLEMENTARY INFORMATION:

*Title:* Certification of Tax Determination, Wine.

*OMB Number:* 1512-0138.

*Form Number:* ATF F 5120.20 (2650).

*Abstract:* Refund of tax on wine that has been manufactured, produced, bottled or packaged in bulk containers in the U.S. and then exported. ATF F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 500.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9507 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the User's Report of Denatured Spirits.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* User's Report of Denatured Spirits.

*OMB Number:* 1512-0075.

*Form Number:* ATF F 5150.18.

*Abstract:* ATF F 5150.18 is submitted annually by holders of permits to use specially denatured spirits to summarize their manufacturing activities during the preceding year. The information is used by ATF to pinpoint unusual activities that could indicate a threat to the Federal revenue or possible dangers to the public. The record retention period for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 2,765.

*Estimated Time Per Respondent:* 18 minutes.

*Estimated Total Annual Burden Hours:* 830.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9509 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula and/or Process For Articles Made With Specially Denatured Spirits.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Formula and/or Process For Articles Made With Specially Denatured Spirits.

*OMB Number:* 1512-0073.

*Form Number:* ATF 5150.19.

*Abstract:* ATF F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. ATF uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirements of 26 U.S.C. 5273.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 2,683.

*Estimated Time Per Respondent:* 54 minutes.

*Estimated Total Annual Burden Hours:* 2,415.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9509 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Applications-Volatile Fruit-Flavor Concentrate Plants.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESS:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Applications-Volatile Fruit-Flavor Concentrate Plants.

*OMB Number:* 1512-0046.

*Form Number:* ATF F 27-G.

*Recordkeeping Requirement ID Number:* ATF REC 5520/2.

*Abstract:* Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement. The record retention requirement for this information collection is 98 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 10.

*Estimated Time Per Respondent:* 3 hours.

*Estimated Total Annual Burden Hours:* 30.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-9510 Filed 4-14-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Revenue Procedure 97-27

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97-27, Changes in Methods of Accounting.

**DATES:** Written comments should be received on or before June 16, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the revenue procedure should be directed to Faye Bruce, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Changes in Methods of Accounting.

*OMB Number:* 1545-1541.

*Revenue Procedure Number:* Revenue Procedure 97-27.

*Abstract:* The information requested in Revenue Procedure 97-27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 3 hours, 13 minutes.

*Estimated Total Annual Burden Hours:* 9,633.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 6, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00-9410 Filed 4-14-00; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Pacific-Northwest Citizen Advocacy Panel; Meeting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Bethel, Alaska.

**DATES:** The meeting will be held Friday April 28, 2000 and Saturday April 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lori M. Dupuis at 1-888-912-1227 or 206-220-6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday

April 28, 2000, 7:00 p.m. to 9:00 p.m. and Saturday April 29, 2000, 10:00 a.m. to 1:00 p.m. at the KVNA Building, 841 River Street, Bethel, Alaska.

The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write Lori M. Dupuis, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Lori M. Dupuis. Ms. Dupuis

can be reached at 1-888-912-1227 or 206-220-6096.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2000.

**Cathy VanHorn,**

*Director, Communication and Liaison,  
Taxpayer Advocate Service.*

[FR Doc. 00-9411 Filed 4-14-00; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Monday,  
April 17, 2000**

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**Part II**

## **Securities and Exchange Commission**

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**17 CFR Part 200 et al.  
Electronic Filing by Investment Advisers;  
Proposed Amendments to Form ADV;  
Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200, 275, and 279

[Release No. IA-1862; 34-42620; File No. S7-10-00]

RIN 3235-AD21

### Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission and the state securities authorities are creating an electronic filing system for investment advisers. The system will permit investment advisers to satisfy their filing obligations with federal and state regulators with a single electronic filing made over the Internet. The system also will provide public access to information about investment advisers and persons who work for investment advisers. In connection with the development of the electronic filing system, we are proposing new rules under the Investment Advisers Act of 1940 and proposing to amend others. The new rules would require advisers to submit their filings electronically. Form ADV would be substantially updated and revised to accommodate electronic filing. Finally, we are proposing amendments that would require advisers to deliver to clients a narrative brochure written in plain English.

**DATES:** Comments must be received on or before June 13, 2000.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-10-00; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (<http://www.sec.gov>).

**FOR FURTHER INFORMATION CONTACT:** Lori H. Price, <[pricel@sec.gov](mailto:pricel@sec.gov)> or Jeffrey O. Himstreet, <[himstreetj@sec.gov](mailto:himstreetj@sec.gov)>, at (202) 942-0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth

Street, NW., Washington, DC 20549-0506.

**SUPPLEMENTARY INFORMATION:** The Commission today is requesting public comment on proposed amendments to rules 30-5 and 30-11 of the SEC's Organization and Program Management rules (17 CFR 200.30-5 and 200.30-11), new rule 203-3 and Form ADV-H; proposed amendments to rules 0-2, 0-7, 203-1, 203-2, 203A-1, 203A-2, 204-1, 204-2, and 204-3 (17 CFR 275.0-2, 275.0-7, 275.203-1, 275.203-2, 275.203A-1, 275.203A-2, 275.204-1, 275.204-2, and 275.204-3); and Form ADV, Form ADV-W, and Form 4-R (17 CFR 279.1, 279.2, and 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1) (the Advisers Act or the Act). The Commission also is proposing to withdraw rules 204-5 and 206(4)-4 (17 CFR 275.204-5 and 275.206(4)-4) and Forms 5-R, 6-R, 7-R, and ADV-Y2K (17 CFR 279.5, 279.6, 279.7, and 279.9) under the Advisers Act.

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### Executive Summary

The Commission and the state securities authorities are creating an Internet-based system of electronic filing for investment advisers. The system, which we call the Investment Adviser Registration Depository (IARD),

will permit investment advisers to satisfy filing obligations under state and federal laws by making a single electronic filing. Information contained in filings made through the IARD will be stored in a database that members of the public will be able to access free of charge through the Internet. The IARD, which is being built and will be operated for us by NASD Regulation, Inc. (NASDR), will give investors easy access to information about investment advisers.

Today we are proposing to amend our rules to require advisers to make filings with us through the IARD after the system begins to operate. In addition, we are proposing substantial amendments to our application, reporting, and disclosure requirements for investment advisers. Some of the amendments are designed to take advantage of electronic filing. Others reflect recent regulatory changes. And others are designed to improve the quality of information advisers must provide to their clients and prospective clients in their information statements (brochures).

### I. Introduction

Since we implemented our EDGAR system in 1993, we have sought additional ways to take advantage of developments in information technology to provide investors with better access to market information.<sup>1</sup> More and more types of filings are made with us electronically each year.<sup>2</sup> As a

<sup>1</sup> Our EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system electronically receives, processes and disseminates documents required to be filed with us under the Securities Act of 1933 (15 U.S.C. 77a to -mm), the Securities Exchange Act of 1934 (15 U.S.C. 78a to -mm) (Exchange Act), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a to -79), the Trust Indenture Act of 1939 (15 U.S.C. 77sss to -bbbb), and the Investment Company Act of 1940 (15 U.S.C. 80a-1 to -64) (Investment Company Act).

<sup>2</sup> In 1995, we required new Form 24F-2 (used by registered investment companies for annual notices required by rule 24f-2 under the Investment Company Act) to be filed through EDGAR. See Registration Fees for Certain Investment Companies, Investment Company Act Release No. 21332 (Sept. 1, 1995) (60 FR 47041 (Sept. 11, 1995)). In 1995, we also permitted electronic filing of Forms 3, 4 and 5 and notices of securities transactions on Form 144, required under the Exchange Act, as well as notices concerning proxy communications for limited partnership roll-up transactions. See Adoption of Updated EDGAR Filer Manual and Technical Rule Amendments, Securities Act Release No. 7241 (Nov. 13, 1995) (60 FR 57682 (Nov. 17, 1995)). In 1998, we allowed new mutual fund "profiles" to be filed through EDGAR. See New Disclosure Option for Open-End Management Investment Companies, Investment Company Act Release No. 23065 (Mar. 13, 1998) (63 FR 13968 (Mar. 23, 1998)). In 1999, we required Form 13F (filed by institutional investment managers), which we previously allowed to be filed electronically on a voluntary basis, to be filed electronically. See Rulemaking for EDGAR System,

result, investors have timely access to the latest reports and filings made by public issuers. Last year, we required broker-dealers to begin to register with us electronically.<sup>3</sup> Today we are proposing a number of rules and rule amendments designed to bring electronic filing to investment advisers.

Approximately 8,000 investment advisers are registered with the Commission under the Advisers Act. We estimate that another 12,000 are registered with state securities authorities. These advisers currently make filings with us and the states on paper, much as they have since 1940, when the Advisers Act was enacted. Investment adviser filings do not appear on our EDGAR system and are not easily accessible or widely available from other sources. In 1996, Congress passed legislation giving us authority to modernize our registration system and requiring us to provide investors with easy access to information about advisers.<sup>4</sup>

NASDR currently is building the IARD for us and the state securities authorities.<sup>5</sup> The IARD will permit

Investment Company Act Release No. 23640 (Jan. 12, 1999) (64 FR 2843 (Jan. 19, 1999)). In 1999, we required Form N8-F (used to deregister a registered investment company), also previously filed electronically on a voluntary basis, to be filed electronically. See Deregistration of Certain Registered Investment Companies, Investment Company Act Release No. 23786 (Apr. 15, 1999) (64 FR 19469 (Apr. 21, 1999)). In 1999, we also required investment companies to file codes of ethics through EDGAR as an exhibit to their registration statements. See Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821 (Aug. 27, 1999)).

<sup>3</sup> See Broker-Dealer Registration and Reporting, Securities Exchange Act Release No. 41594 (July 2, 1999) (64 FR 37585 (July 12, 1999)) (amending Exchange Act rules 15b3-1, 15Ba2-2, and 15Ca2-1 (17 CFR 240.15b3-1, 240.15Ba2-2, and 240.15Ca2-1)).

<sup>4</sup> National Securities Market Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code) (NSMIA). Section 303 of NSMIA added new section 203A(d) of the Advisers Act (15 U.S.C. 80b-3a(d)), which provides that "(the Commission may, by rule, require an investment adviser—(1) to file with the Commission any fee, application, report, or notice required by this title or by the rules issued under this title through any entity designated by the Commission for that purpose; and (2) to pay the reasonable costs associated with such filing." Section 306 of NSMIA provides that "(the Commission shall—(1) provide for the establishment and maintenance of a readily accessible telephonic or other electronic process to receive inquiries regarding disciplinary actions and proceedings involving investment advisers and persons associated with investment advisers; and (2) provide for prompt response to any inquiry described in paragraph (1)." Section 306 was not codified.

<sup>5</sup> NASDR is a wholly owned subsidiary of the National Association of Securities Dealers (NASD), a self-regulatory organization which supervises broker-dealers that conduct a public business in securities other than on an exchange of which the broker-dealer is a member.

advisers to make filings with the Commission and the states through the Internet. The information advisers submit will be stored in a database, and investors will have access to it by visiting a web site. The IARD will not only improve public access to information about advisers, it will also ease regulatory burdens on advisers by permitting a single electronic filing to satisfy SEC and state filing requirements.<sup>6</sup> It also will help us better monitor advisers and administer the federal securities laws. The IARD is described in Section II.A. of this Release.

Most of the filings made with the IARD will be on Form ADV, the Uniform Application for Investment Adviser Registration. Advisers use Form ADV to apply for registration with us and with the state securities authorities, and must keep it current by filing periodic amendments as long as they are registered.<sup>7</sup> We are proposing to require that new advisers apply for registration electronically, and that advisers currently registered with us re-submit their Form ADV to us through the IARD. The proposed new filing rules are described in Section II.B. and the proposed transition rules are described in Section II.C. of this Release.

Form ADV currently has two parts. Part I asks for information about an adviser's business, the persons who own or control the adviser, and whether the adviser or certain of its personnel have been sanctioned for violating the securities or other laws. It provides us with information we need to decide whether to grant an application for registration or to revoke a registration, and to manage our regulatory and examination programs. Our proposed changes to Part I are discussed in Section II.D.1. of this Release.<sup>8</sup>

<sup>6</sup> In general, this Release discusses our rules and the changes we are proposing that affect advisers registered with us. The state securities authorities are likely to make similar changes that affect advisers registered with the states.

State-registered advisers filing through the IARD can also satisfy Department of Labor (DOL) filing requirements. A state-registered adviser currently must file Form ADV with DOL to be an "investment manager" for purposes of the Employee Retirement Income Security Act (ERISA). 29 U.S.C. 1002(38)(B)(ii). DOL will treat an adviser as having satisfied this filing requirement when its Form ADV is available to DOL "from a centralized electronic \* \* \* database." See Act of Nov. 10, 1997, Pub. L. No. 105-72, 111 Stat. 1457 (adding explanatory note "Availability of Documents Via Filing Depository" to 29 U.S.C. 1002).

<sup>7</sup> See rules 203-1 and 204-1.

<sup>8</sup> We are changing the numbering of the parts of Form ADV from Roman to Arabic numbers: Part I to Part 1, Part II to Part 2. References in this Release to Part I or Part II refer to current Form ADV; references to Part 1 or Part 2 refer to the proposed form. The paper version of Form ADV, as proposed

Part II, or a written brochure containing the same information, must be delivered to clients before they engage the adviser and then offered to them each year.<sup>9</sup> Part II provides clients with information about business practices, fees and conflicts of interest the adviser may have with its clients. We are proposing that all advisers provide clients with a narrative brochure containing disclosure about the advisory firm written in plain English, and update the brochure at least once a year to reflect changes. We also are proposing to require that the firm brochure be accompanied by a supplement containing important information about the advisory personnel with whom the client will be dealing. Proposed Part 2A sets forth the information about the advisory firm that an adviser must include in its brochure. Proposed Part 2B sets forth the information about advisory personnel that an adviser must include in brochure supplements. These proposed changes are described in Section II.D.2. of this Release.

## II. Discussion

### A. The Investment Adviser Registration Depository

The IARD is being built and will be operated by NASDR under contracts with the Commission and the North American Securities Administrators Association, Inc. (NASAA).<sup>10</sup> The IARD will be modeled on NASDR's Web Central Registration Depository (CRD), which is used by broker-dealers to make filings with us, state securities authorities, and NASDR.<sup>11</sup> NASDR will perform certain administrative tasks related to the filing and public disclosure systems described below. It will not, however, act as a self-regulatory organization for advisers.<sup>12</sup>

#### 1. The Investment Adviser Filing System

The IARD will be an Internet-based system that advisers will access through

to be amended, is included as Appendix A of this Release.

<sup>9</sup> See rule 204-3.

<sup>10</sup> NASAA represents the 50 U.S. state securities authorities responsible for the administration of state securities laws, also known as "blue sky laws." Currently, 49 states (all except Wyoming), the District of Columbia, Guam, and Puerto Rico have investment adviser statutes. See <<http://www.nasaa.org/search/memberslinks.html>> (last visited Mar. 15, 2000).

<sup>11</sup> For a description of the CRD system, see Securities Exchange Act Release No. 41594, *supra* note 3.

<sup>12</sup> Only Congress can grant such authority. See The Maloney Act, Pub. L. 75-719, 52 Stat. 1070 (1938) (codified as amended at 15 U.S.C. 78o, authorizing the Commission to register national securities associations).

computers in their offices, without the need for specialized hardware or software. An adviser will be able to use the system to apply for registration, amend its registration, and withdraw from registration.<sup>13</sup> An SEC-registered adviser will also be able to electronically send "notice filings" to the states and pay state fees through the IARD.<sup>14</sup>

The IARD will contain a number of features designed to make it easy for persons to complete Form ADV, even if they are unfamiliar with the form. To use the system, an adviser will visit a designated web site, which it will be able to enter through our web site.<sup>15</sup> Persons visiting the web site to make a filing will indicate whether they wish to apply for registration, amend an existing registration, or withdraw from registration as an investment adviser. Persons wishing to register as an investment adviser will be presented with a blank Form ADV, which they would complete on-line. A partially completed form could be saved in draft form.<sup>16</sup> A "help" function will be available to answer questions,<sup>17</sup> and an on-line glossary will allow persons completing the form to review the definition of key terms used in the form.<sup>18</sup>

The IARD will present an adviser completing Part 1 of Form ADV with only those items relevant to its application. An adviser indicating that

<sup>13</sup> Institutional investment managers will continue to make Form 13F filings on our EDGAR system. See Investment Company Act Release No. 23640, *supra* note 2. Form 13F filings are made by many firms other than investment advisers, and it would not be feasible to include these filings on the IARD.

<sup>14</sup> Many states require an SEC-registered adviser doing business in their state to provide them with copies of the adviser's SEC filings and to pay fees. See section 201(c) of the Uniform Securities Act (1999). These are usually referred to as "notice filings." See section 307(a) of NSMIA (states are permitted to require SEC-registered advisers to file with them documents advisers filed with the Commission "solely for notice purposes \* \* \* and (pay) any required fee"). Section 307 was not codified.

<sup>15</sup> In order to use the system, an adviser first will complete a paper request for IARD filer access and submit it to NASDR. NASDR then will assign a user name and password, which persons authorized to file on behalf of the adviser would be required to use to submit filings to the IARD.

<sup>16</sup> An adviser will be able to save one draft of each form type for up to 60 days. While an adviser will be not able to download the draft form, it will be able to print either the entire draft form or selected pages.

<sup>17</sup> The "help" function will provide answers to frequently asked questions and guidance for completing the electronic Form ADV. Our staff will formulate answers to the frequently asked questions and update them from time to time.

<sup>18</sup> Defined terms appear in *italic* on the forms, both on the proposed paper forms and on the electronic forms in the IARD. The glossary is included in Appendix A of this Release.

it is registering with us, for example, will not see items that apply only to advisers registering with the states.<sup>19</sup> The system also will prevent an adviser from submitting an incomplete form or from entering inconsistent information at different places on the form.<sup>20</sup> These features should help prevent the most common errors we see in applications for registration under the Advisers Act and speed the registration process.

We also have designed the system to provide efficiencies for firms registered with us as both an investment adviser on Form ADV through the IARD and a broker-dealer on Form BD<sup>21</sup> through the CRD. These advisers will be able to link their responses to common items to avoid entering the data twice.<sup>22</sup>

Unlike the check-the-box and multiple-choice format of proposed Part 1, proposed Part 2 of Form ADV would require the adviser to prepare a narrative brochure containing disclosure about the advisory firm.<sup>23</sup> NASDR will design the part of the system that will accept Part 2.<sup>24</sup> Once this part of the system is built, an adviser will be able to prepare its brochure on its own computer using its word processing software and transmit the file to the IARD.<sup>25</sup> We do not anticipate, however, that brochure supplements will be submitted to the IARD.

## 2. The Public Disclosure System

All current information submitted to the IARD by advisers will be available to members of the public through our web site without charge.<sup>26</sup> Interested persons will be able to search the database to retrieve information about advisory firms and persons associated with them.<sup>27</sup> Anyone with access to the

<sup>19</sup> See discussion of additional requirements for state-registered advisers *infra* at Section II.D.1.b. of this Release.

<sup>20</sup> For example, if an adviser indicates that it has assets under management of less than \$25 million, the system would preclude the adviser from indicating that it is eligible for SEC registration because it has assets under management of \$25 million or more. See proposed Items 2.A(1) and 5.F(2)(c) of Part 1A of Form ADV.

<sup>21</sup> 17 CFR 249.501.

<sup>22</sup> See discussion of IARD functionality for the Disciplinary Reporting Pages (DRPs) and Schedules A and B, *infra* notes 85 and 101, respectively.

<sup>23</sup> See discussion of Part 2 *infra* at Section II.D.2. of this Release.

<sup>24</sup> See discussion of system implementation *infra* at Section II.A.3. of this Release.

<sup>25</sup> Using their word processing software, advisers may be required to convert the word processing file to a standard file format, such as HyperText Markup Language (HTML) or American Standard Code for Information Interchange (ASCII).

<sup>26</sup> The IARD data will be available for commercial use, for a fee, and the proceeds will be used to maintain and upgrade the IARD.

<sup>27</sup> Members of the public will be able to search the IARD for information about a specific

Internet will be able to look up an adviser and review its Form ADV—including the disciplinary records of the adviser and persons associated with the adviser.<sup>28</sup>

## 3. System Implementation

We expect that the IARD will begin to receive filings later this year. We anticipate that the entire system will be "rolled out" in four separate releases:<sup>29</sup>

- First, SEC-registered advisers and applicants for SEC registration will begin using the system to file Part 1 with us and submit notice filings to state securities authorities.<sup>30</sup> We expect that most (if not all) state securities authorities will accept "notice filings" from SEC-registered advisers through the IARD at that time, and that many state securities authorities also will begin to require advisers registered with them to use the system. We understand, however, that some state securities authorities lack statutory authority to require advisers registered with them to file through the IARD and will postpone

individual once the system begins accepting investment adviser representative filings on Form U-4 (Uniform Application for Securities Industry Registration or Transfer) and Form U-5 (Uniform Termination Notice for Securities Industry Registration). See discussion of system implementation *infra* Section II.A.3. of this Release.

<sup>28</sup> Section 15A(h)(3)(i) of the Exchange Act (15 U.S.C. 78o-3(h)(3)(i)) requires a registered securities association to establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and to promptly respond to any of these inquiries in writing. NASDR currently makes certain information about broker-dealers and their agents available on its web site. Disciplinary information about broker-dealers and their agents is not available on NASDR's web site, although NASDR will make it available in written form upon request. NASDR has not made broker-dealer disciplinary information available on its web site because the Exchange Act provides NASDR with immunity from lawsuits challenging the accuracy of disciplinary information it provides in *written* form. NASDR has asked Congress to amend the Exchange Act to provide legal immunity for information made available on the Internet. See Ruth Simon and Aaron Lucchetti, *Disciplinary Records of Stockbrokers Won't be on Web this Spring After All*, Wall St. J., Jan. 18, 1999, at B7. If immunity is granted, we hope that the CRD and the IARD can be linked so that a single search will provide information from both databases. This may be helpful to an investor who is unsure whether a person or firm is registered as a broker-dealer or an adviser. Until then, the IARD will warn investors that they should consider contacting NASDR for possible additional disciplinary information.

<sup>29</sup> We understand that some would prefer that all components of the system begin operating together at the earliest possible date. We share that preference. Implementing the system in stages, however, permits NASDR to reduce its programming costs, which would otherwise have to be offset by higher filing fees.

<sup>30</sup> Section II.C. of this Release discusses our proposed transition process for advisers registered with us.

full participation in the system until necessary legislation is enacted.<sup>31</sup>

- Second, NASDR will release the public disclosure system, which should begin operating a few months after the first filings are made on the system.<sup>32</sup>

- Third, NASDR will release the state investment adviser representative licensing system. We expect that it will begin operating a few months after the public disclosure system is released. It is likely that some states will not participate until their laws have been changed.

- Fourth, the IARD will begin to accept Part 2A of Form ADV.

#### 4. Filing Fees

The Advisers Act permits the operator of the IARD to charge reasonable fees to cover system costs.<sup>33</sup> We will pay NASDR to build the system; filing fees will be used to pay for its operation and maintenance. NASDR will charge fees for initial applications and annual updating amendments.<sup>34</sup> These fees will be based on the amount of assets an adviser has under management and the number of states to which the adviser submits notice filings. We expect IARD annual filing fees to range from \$200 for smaller advisers to \$400 for the largest advisers.<sup>35</sup> We must approve any fee or fee change, and we will do so only if the proposed fees are reasonable and necessary to support proper operation of the IARD. The IARD also will collect registration, licensing and notice fees on behalf of state securities authorities.<sup>36</sup>

<sup>31</sup> We understand that these state securities authorities are able to accept broker-dealer filings exclusively through the CRD because NASDR mandates the use of the CRD in its capacity as the self-regulator of its members. NASDR has no similar authority over investment advisers. Anyone interested in a particular state's participation in the IARD should contact the state's securities authority or NASAA.

<sup>32</sup> During the period of time after advisers begin to submit filings to the system and before the public disclosure system is operational, these filings will continue to be available from our public reference room.

<sup>33</sup> Section 203A(d). See *supra* note 4 (section 203A(d) of the Advisers Act authorizes us to require advisers to pay the costs associated with electronic filing).

<sup>34</sup> NASDR does not plan to charge fees for other amendments to Form ADV or for filing Form ADV-W (17 CFR 279.2), the Notice of Withdrawal from Registration as Investment Adviser.

<sup>35</sup> As discussed in Section II.C. of this Release, *infra*, we will require advisers that are registered with us to re-submit their registration forms through the IARD. We expect that the IARD filing fees for these one-time submissions and for initial applications will be approximately twice the amount of the IARD annual filing fees. When the IARD accepts investment adviser representative filings on Form U-4 and Form U-5, *supra* note 27, NASDR will establish filing fees for these filings.

<sup>36</sup> We do not charge any registration fees for investment advisers. See Changes Selected Rules In Order To Eliminate Fees Previously Adopted by the

All fee revenues will be segregated from NASDR's other assets and retained for the exclusive benefit of the IARD. The system will be audited annually by an independent public accountant, the results of which will be reported to us and NASAA. We will provide a copy of the report to interested persons.

Advisers using the system will be required to establish an account with NASDR and maintain funds in the account necessary to pay state fees as well as IARD filing fees.<sup>37</sup> The IARD will automatically calculate the amount of the fees due based on information provided by the adviser on its Form ADV, debit the adviser's account, and remit amounts due to the appropriate state securities authorities. The IARD will not accept a filing if insufficient funds are on account to pay fees due.

The one-stop filing and fee collection functions of the IARD should substantially reduce regulatory burdens on advisers. Larger advisers, which typically will impose more costs on the system by submitting notice filings and paying fees in multiple states, will benefit the most. We believe, therefore, that it is appropriate that larger advisers pay higher fees to support the system.

#### B. Proposed Amendments to SEC Rules

To implement the IARD, we are proposing new rules and amendments to rules that govern the process by which advisers apply for registration with us, amend their registrations, and withdraw from registration.<sup>38</sup> This section discusses the proposed rules and rule amendments.<sup>39</sup>

Commission Pursuant to the Independent Offices Appropriations Act of 1952, Investment Advisers Act Release No. 1578 (Sept. 17, 1996) (61 FR 49957 (Sept. 24, 1996)) (eliminating \$150 initial application fee).

<sup>37</sup> Advisers that are members of the NASD (because they also are broker-dealers) will be able to use their existing CRD accounts to pay IARD filing fees as well as state registration and notice fees. We currently are exploring with NASDR ways for advisers to transfer funds to NASDR for filing and state fees.

<sup>38</sup> Under the proposed rule amendments, advisers will file Forms ADV and ADV-W through the IARD system. We receive relatively few filings on Form ADV-E (17 CFR 279.8), and accountants that conduct surprise inspections of advisers would continue to file that form with us on paper. We expect to receive few filings on proposed Form ADV-NR, the execution form for non-resident general partners and managing agents of investment advisers (which would be substantially similar to Form 7-R), and we therefore propose to require paper filings of this new form. See discussion of proposed Form ADV-NR *infra* at section II.D.3. of this Release and proposed Form ADV-NR is included as Appendix D of this Release. Advisers also would file requests for hardship exemptions in paper format. See discussion of proposed hardship exemptions *infra* at section II.B.4. and proposed Form ADV-H *infra* at Appendix C. of this Release.

<sup>39</sup> In addition to the rule changes discussed in detail in this Release, we are proposing to withdraw

#### 1. Applications for Registration on Form ADV

We propose to amend our rules under the Advisers Act to require all advisers applying for registration with us to file Form ADV through the IARD.<sup>40</sup> Each adviser currently registered with us would be required to re-submit its Form ADV to us using the IARD and the revised form.<sup>41</sup> We will publish a schedule of dates by which each adviser registered with us must re-submit its Form ADV through the IARD.<sup>42</sup> Paper filings would be accepted only if the adviser has obtained a continuing hardship exemption, as described below.<sup>43</sup>

#### 2. Amendments to Form ADV

After an adviser has submitted an application for registration on Form ADV or re-submitted its Form ADV through the IARD, the adviser will have to make all amendments through the system.<sup>44</sup> Our rules would continue to require each adviser to update its Form ADV at least once a year, or more frequently depending upon the information in the form that becomes

rule 204-5 (Year 2000 Reports) and Form ADV-Y2K.

<sup>40</sup> Proposed rule 203-1(b). The Advisers Act provides that, within 45 days after a person files an application for registration with us, we must either grant registration under the Act or institute a proceeding to determine whether registration should be denied. Section 203(c)(2) (15 U.S.C. 80b-3(c)(2)). Under the proposed amendments, an application for registration under the Act that is filed with the IARD would be considered filed with us on the date that it is accepted by the IARD. Proposed rule 203-1(c). As discussed above, the IARD will only accept filings that are complete and for which filing fees have been paid. Proposed rule 203-1(d).

We explained in a 1997 release that an adviser and its affiliates could submit a single registration on Form ADV. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) (62 FR 28112 (May 22, 1997)) at n.64. Our experience with advisers that have attempted such a registration has convinced us that Form ADV does not, and cannot be revised to, accommodate this registration, since each adviser may have different responses to the same items. Therefore each affiliated adviser would be required to file a separate Form ADV.

<sup>41</sup> Proposed rule 204-1(b).

<sup>42</sup> See discussion of transition process *infra* Section II.C. of this Release. Until the date on which an adviser must re-submit its Form ADV, that adviser will continue to make all required amendments on paper using the current (*i.e.*, not revised) Form ADV. When we adopted Uniform Form ADV in 1985, we required all advisers registered with us to re-submit the form. See Uniform Investment Adviser Registration Application Form, Investment Advisers Act Release No. 991 (Oct. 15, 1985) (50 FR 42903 (Oct. 23, 1985)).

<sup>43</sup> The proposed hardship exemptions are discussed *infra* in Section II.B.4. of this Release.

<sup>44</sup> Proposed rules 203-1(b) and 204-1(b).

stale.<sup>45</sup> To amend its Form ADV, an adviser would access its Form ADV through the IARD and simply type over the stale information.<sup>46</sup> The adviser would then electronically “sign”<sup>47</sup> the form and submit it to the IARD.<sup>48</sup> The IARD would replace the stale information with the new information submitted and record the date of the change.<sup>49</sup>

### 3. Withdrawal From Registration

Investment advisers generally withdraw from SEC registration as a result of ceasing operations or switching to state registration.<sup>50</sup> In either case, an adviser would file Form ADV-W with the IARD.<sup>51</sup> The IARD will pre-populate the Form ADV-W with information

<sup>45</sup> For the rules governing updating of Part 1A, *see* proposed rule 204-1(a) and proposed General Instruction 3 to Form ADV. For the rules governing updating of Part 2, *see* proposed rule 204-3, proposed Instruction 8 to Part 2A, and proposed Instruction 7 to Part 2B.

<sup>46</sup> When an adviser makes its annual updating amendment, information it has previously submitted regarding the amount of its assets under management and other information relevant to its eligibility for SEC registration would not appear. As a result, an adviser would be forced to affirmatively restate its basis for continued eligibility. This approach is not substantively different than the current requirement to re-file Schedule I each year, even if none of the information has changed. *See* rule 204-1(a). As discussed below, we are proposing to bring the information requirements of Schedule I into Part 1A of the form as Item 2.A. and eliminate Schedule I. *See* discussion *infra*, Section II.D.1.a. of this Release.

<sup>47</sup> The process of executing Form ADV and filing it through the IARD system will be an “electronic signature,” but not a “digital signature,” which is an electronic sequence of bits encrypted by a “key” belonging only to the person “signing” the document. *See generally* Information Security Committee, Electronic Commerce Division, Science and Technology Section, American Bar Association, Digital Signature Guidelines § 1.11 (Aug. 1, 1996) (available at <<http://www.abanet.org/scitech/ec/isc/dsgfree.html>> (last visited Mar. 15, 2000)).

<sup>48</sup> *See* discussion of electronic signatures and the proposed execution pages of Form ADV *infra* at Section II.D.3. of this Release. An adviser that has been granted a continuing hardship exemption would amend its Form ADV by submitting Page 1, the appropriate execution page, and each page on which a change is made with the item number circled for which the response is changed. *See* discussion of proposed hardship exemptions at Section II.B.4. of this Release and proposed General Instruction 13 to Form ADV.

<sup>49</sup> All information replaced by the adviser will be retained on the IARD and will remain accessible, although not through the public disclosure system. The public disclosure system will provide access only to current information about each adviser, including disciplinary events occurring during the past ten years. *See* discussion of public disclosure system *supra* at Section II.A.2. of this Release.

<sup>50</sup> An adviser might “switch” from SEC to state registration because its assets under management have decreased to below \$25 million and therefore it is no longer eligible for SEC registration. *See* section 203A(a) (15 U.S.C. 80b-3a).

<sup>51</sup> Proposed rule 203-2. The proposed amendments to Form ADV-W are discussed *infra* at Section II.E. of this Release and proposed Form ADV-W is included as Appendix B of this Release.

from the adviser’s most recent Form ADV filing; the adviser would then complete Form ADV-W, electronically sign it, and submit it to the IARD. We propose to make investment adviser withdrawals effective upon filing, eliminating the current 60-day waiting period.<sup>52</sup> Eliminating the 60-day waiting period for investment adviser withdrawals would smooth the transition process for advisers switching to state registration.

An adviser withdrawing from SEC registration and switching to state registration currently has a grace period to allow time for the adviser to register with the states.<sup>53</sup> The preemptive provisions of the Advisers Act, however, preclude the states from regulating the adviser until it has withdrawn from SEC registration.<sup>54</sup> We propose to adopt a rule amendment that would suspend preemption of a state’s laws when the adviser registers with that state.<sup>55</sup> Once registered with a state, an adviser would become subject to that state’s adviser statute while also remaining subject to SEC regulation until it files Form ADV-W to withdraw from SEC registration.<sup>56</sup> Once the

<sup>52</sup> When we adopted the 60-day waiting period of rule 203-2(b), our enforcement remedies were limited primarily to suspending or revoking an adviser’s registration, and the waiting period was intended to give our staff the opportunity, in appropriate cases, to investigate or institute proceedings against the adviser before it withdrew its registration. *See* Adoption of Form ADV-W and Amendment of Rule 203-2 Under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 213 (Nov. 13, 1967) (32 FR 16151 (Nov. 25, 1967)). This 60-day delay is no longer necessary, as we now have broader enforcement remedies that may be imposed on all advisers, registered or not. *See* sections 203(i) (fines), (j) (disgorgement), and (k) (cease and desist orders) (15 U.S.C. 80b-3(i), (j) and (k)). We also propose to amend our procedural rules to delete a provision allowing our staff to determine whether a withdrawal should become effective “sooner than the normal 60-day waiting period.” *See* rule 30-11(b)(2)(ii) (17 CFR 200.30-11(b)(2)(ii)).

<sup>53</sup> Rule 203A-1(c) (90 days).

<sup>54</sup> Section 203A(b) of the Act (15 U.S.C. 80b-3a(b)) preempts state laws that would require the registration, qualification and licensing of investment advisers registered with the Commission. *See* Investment Advisers Act Release No. 1633, *supra* note 40 at II.H.1.

<sup>55</sup> *See* proposed rule 203A-1(b)(2)(ii). We also are proposing minor amendments to the rule for eligibility for SEC registration by redrafting the rule in plain English and revising it to reflect our interpretation that an adviser is “regulated or required to be regulated” if its principal office and place of business is in a state that has enacted an investment adviser statute. *See* Investment Advisers Act Release No. 1633 *supra* note 40 at II.E.1.

<sup>56</sup> An adviser no longer eligible for SEC registration may shorten the time it is subject to regulation by both the Commission and states by withdrawing from SEC registration promptly after registering with the appropriate states. We adopted a rule similar to the switching rule to assist the Ohio Securities Division in implementing a new investment adviser statute enacted in that state. *See*

adviser has filed Form ADV-W with us, the adviser generally would be subject only to state regulation.

### 4. Hardship Exemptions

In proposing to require advisers to file electronically, we are assuming that advisers have computers and access to the Internet, and will be able to submit filings through the IARD.<sup>57</sup> We recognize, however, that there may be circumstances under which an adviser cannot make an electronic filing, and thus we are proposing two hardship exemptions that advisers could request by filing a short form with NASDR.<sup>58</sup>

An adviser that files electronically could request a temporary hardship exemption if unexpected difficulties prevent it from filing, such as a computer malfunction or electrical outage.<sup>59</sup> The exemption would be available upon filing and allow an adviser to delay the deadline for an electronic filing for seven business days.<sup>60</sup> A *continuing hardship exemption* would be available only to an adviser that is a “small business”<sup>61</sup> and can demonstrate that the electronic filing requirements would create an undue hardship (e.g., the adviser does not have a computer and is unable to

rule 203A-6 (17 CFR 275.203A-6) and Transition Rule for Ohio Investment Advisers, Investment Advisers Act Release No. 1794 (Mar. 25, 1999) (64 FR 15860 (Apr. 1, 1999)).

<sup>57</sup> A 1998 industry survey of registered investment advisers noted that all respondents use the Internet. According to the survey, advisers “new to the business or those with less than \$100 million of assets under management are more active users of the online channel than are higher-net-worth (advisers).” *See* Phil Clark, Cerrulli Survey; Advisers Flock to Internet for Research and Fund Data, *Fund Marketing Alert*, July 6, 1998 at 1. In 1999, the Institute of Certified Financial Planners (ICFP) and Morningstar also conducted a survey of financial planners and found that 99% of those surveyed had Internet access. *See* ICFP/Morningstar, *Work/Computer Environment Among RIAs* (available in File No. S7-10-00). Those advisers that cannot submit electronic filings themselves can obtain the assistance of a filing service—a firm that provides assistance to advisers and broker-dealers in preparing and making regulatory filings. We expect to maintain a list of filing services that an adviser may retain to submit filings on the IARD system.

<sup>58</sup> All requests for a hardship exemption would be submitted on paper to NASDR on proposed Form ADV-H, which is included as Appendix C of this Release. The proposed hardship exemptions are similar to exemptions for issuers that make filings on our EDGAR system. *See* rules 201 and 202 of Regulation S-T (17 CFR 232.201 and 202).

<sup>59</sup> *See* proposed rule 203-3(a)(1).

<sup>60</sup> *See* proposed rule 203-3(a)(3). If the circumstances causing the temporary hardship persist, the adviser would have to make other arrangements to file electronically.

<sup>61</sup> An investment adviser generally is a small business if it (a) Manages assets of less than \$25 million, (b) has total assets of \$5 million or less, and (c) is not in a control relationship with another investment adviser that is not a small business. Rule 0-7 (17 CFR 275.0-7).

afford a filing service). If we grant a continuing hardship exemption, the adviser would file on paper with NASDR, which would then convert the filing to electronic format and charge the adviser an additional fee to cover conversion costs.<sup>62</sup> Since primarily larger advisers are registered with us, we expect that few would qualify for a continuing hardship exemption. We request comment on whether a continuing hardship exemption is necessary for SEC-registered advisers.

### C. Proposed Transition to Electronic Filing

When we adopt these amendments, we will provide an effective date that will correspond to the commencement of operations of the IARD. After that date, all applicants for registration must file their Form ADV and any amendments electronically through the IARD. We expect to publish a schedule by which advisers registered with us on the effective date will re-submit their registration forms to us through the IARD. We are asking for volunteers to be among the first group of advisers to submit their registration to the IARD.<sup>63</sup> We encourage advisers that have used the CRD to volunteer. The experiences of this first group will alert us to any problems with the system and allow NASDR to make adjustments. We request comment on our proposed transition process. How soon after the adoption of the new rules and revised form can advisers be ready to submit their Form ADVs through the IARD?

As discussed above, a later release of the IARD will ultimately accept Part 2A of Form ADV.<sup>64</sup> We propose to require each adviser to file its brochure with us when it makes its first annual update after the IARD begins to accept Part 2A.<sup>65</sup> During the interim period,

<sup>62</sup> Although the adviser would submit Form ADV-H to NASDR, our staff, under authority delegated by us, would grant or deny all requests for a continuing hardship exemption. See proposed rule 30-5(e)(7) of our Organization and Program Management Rules (17 CFR 200.30-5(e)(7)).

<sup>63</sup> To volunteer, send an e-mail with the adviser's name, SEC 801 number, CRD number (if any), and the name, phone number, and e-mail address of a contact person to iard@sec.gov.

<sup>64</sup> As discussed in Section II.A.3. of this Release, only the firm brochure prepared in response to Part 2A will be submitted through the IARD. We are not proposing to require advisers to file their brochure supplements prepared in response to Part 2B.

<sup>65</sup> We will notify advisers when the IARD begins to accept Part 2A of Form ADV and anticipate providing a grace period before requiring any advisers to file Part 2A electronically. See proposed rules 203-1(b)(2) and 204-1(c). Advisers would be required, however, to prepare their brochure in accordance with Part 2 of Form ADV, and to deliver and offer to deliver these brochures in accordance with amended rule 204-3, no later than the date by which all advisers must have re-submitted their

advisers will not be required to submit their brochures to us (either in electronic or paper form), but will, instead, be required to keep them and make them available to our staff.<sup>66</sup> At the request of NASAA, we have included a provision in our proposed rules that a brochure retained by the adviser would be considered "filed" with us.<sup>67</sup> As a result, until advisers submit Part 2A to the IARD, the state securities authorities could require SEC-registered advisers to file a copy of Part 2A (on paper) with them.<sup>68</sup>

### D. Proposed Revisions to Form ADV

We are proposing substantial revisions to Form ADV.<sup>69</sup> We have redrafted many items in simpler, more direct language, and have included brief explanations (in the form) of why we need the requested information. We believe that these changes will make it easier for persons to complete the form. The items continue to be drafted broadly to apply to the different types of advisory organizations registered with us and the state securities authorities. We request comment generally on the organization of the form and the clarity of the language we have used.

#### 1. Part 1

Part 1 of Form ADV asks for information about the adviser and persons associated with the adviser. We need this information to decide whether to grant an application for registration or revoke a registration, and to manage our

Part 1A to the IARD. In addition, advisers would have a 30-day transition period, beginning on the date by which all advisers must have re-submitted their Part 1A to the IARD, to provide their new brochures and brochure supplements to existing advisory clients. See discussion of Part 2 and rule 204-3, *infra* at Section II.D. of this Release.

<sup>66</sup> Proposed rule 203-1(b)(2).

<sup>67</sup> *Id.*

<sup>68</sup> See discussion of "notice filings" *supra* note 14 and accompanying text. As a result of statutory changes made by NSMIA, a state securities authority can only require an SEC-registered adviser to file with the state copies of documents the adviser filed with us. See section 307(a) of NSMIA. To accommodate the state securities authorities' request to receive a copy of a document that we do not require SEC-registered advisers to file with us, we are proposing to deem that the filing was made with us.

<sup>69</sup> The paper version of Form ADV would only be used by an adviser with a continuing hardship exemption from the requirement to file the form electronically. The electronic version of the form will elicit the same information but will have minor differences necessary to reflect and, in some cases take advantage of, an electronic environment. For example, the text of Item 2.B. on the paper form would require an adviser amending its Form ADV to circle the box next to the name of the state that is no longer marked and therefore should no longer receive the adviser's notice filings. On the electronic form, the adviser would be directed to "uncheck" the appropriate box.

regulatory and examination programs. Some of the changes we are proposing in Part 1 are necessary to accommodate electronic filing. Many are in response to developments since Uniform Form ADV was adopted in 1985.<sup>70</sup> The most significant regulatory development affecting investment advisers since 1985 occurred in 1996 when Congress passed NSMIA, dividing regulatory jurisdiction over investment advisers between the Commission and the states.<sup>71</sup> As a result, advisers are no longer required to register with both. Larger advisory firms (generally, those with at least \$25 million of assets under management) register only with us, but often must send notice filings to the states and pay state fees.<sup>72</sup> Smaller advisers register with one or more states,<sup>73</sup> not with us, and most of our regulatory requirements do not apply to them.

The changes made by NSMIA have allowed us to substantially reorganize Part 1, which we propose to divide into two parts. All advisers would complete Part 1A, while only state-registered advisers would complete Part 1B.<sup>74</sup> This new organization would allow SEC-registered advisers (and persons applying for SEC registration) to avoid responding to items requiring information we do not need.

#### a. Part 1A

Part 1A would require an adviser to provide information describing itself and its business through a series of fill-in-the-blank, multiple-choice, and check-the-box questions. As proposed, Part 1A consists of 12 items that request information similar to that requested by current Form ADV.<sup>75</sup> We are proposing a number of changes, the most significant of which are discussed below.

i. *Identifying Information.* We propose to revise the identifying information we require about the adviser to reflect new information we need. For example, we

<sup>70</sup> Investment Advisers Act Release No. 991, *supra* note 42.

<sup>71</sup> See section 203A of the Advisers Act (codifying Section 303 of NSMIA).

<sup>72</sup> See discussion of "notice filings" *supra* note 14.

<sup>73</sup> All advisers in Wyoming and the U.S. Virgin Islands (the only U.S. jurisdictions that do not have an investment adviser statute) and those whose principal office and place of business is in a foreign country register with us regardless of the amount of assets under management. See section 203A(a) of the Advisers Act.

<sup>74</sup> Part 1B is discussed in Section II.D.1.b. of this Release.

<sup>75</sup> Many of the items in Part 1A appear currently in Part I. Part 1A also includes several items that appear currently in Part II. See proposed Items 5.D., 5.E., 5.G., 6, 7, and 8. As proposed, Part 2 will not require advisers to enter data in discrete fields. See discussion of Part 2 of Form ADV *infra* Section II.D.2. of this Release.

would ask for the CRD number of the adviser (if it has one), any web site addresses of the adviser,<sup>76</sup> an e-mail address of a person we can contact about the form, and the fax number of the adviser.<sup>77</sup> The identifying information would be included in Item 1 of Part 1A of the form, and multiple or additional narrative responses to certain sub-items would be included on Schedule D.<sup>78</sup> Schedule I, which currently requires information relevant to whether the adviser should be registered with us or the state securities authorities, would be incorporated into the body of Form ADV in a new Item 2A.<sup>79</sup>

ii. *Educational and Business Background.* We propose to delete the requirements that an adviser report the educational and business background of its personnel.<sup>80</sup> Instead, advisers would be required to provide this information to clients in the adviser's brochure or brochure supplements.<sup>81</sup>

iii. *Disciplinary Disclosure.* We propose several amendments to the item requiring disclosure of disciplinary information about the adviser and certain of its advisory personnel.<sup>82</sup>

<sup>76</sup> We visit web sites sponsored by advisers registered with us as part of our routine examinations.

<sup>77</sup> See proposed Items 1.E., 1.L., 1.J. and 1.F(4), respectively, of Part 1A of Form ADV. We are proposing to ask for the social security number and date of birth of control persons reported on Schedules A and B and persons for whom a Disciplinary Reporting Page is filed (discussed below) to permit the IARD to distinguish between persons who share the same name. To protect the privacy of these persons, the social security numbers will *not* be available on the public disclosure system. See Amendments to Forms and Schedules to Remove Voluntary Provision of Social Security Numbers, Securities Act Release No. 7424 (June 25, 1997) (62 FR 35338 (July 1, 1997)) (removing social security numbers from filings publicly available on EDGAR). Similarly, the public disclosure system will not report the home address of a sole proprietor (required by proposed Item 1.H.), unless the adviser's home address is also its principal office and place of business (required by proposed Item 1.F.).

<sup>78</sup> Proposed Schedule D would be the continuation schedule for Part 1A. Unlike current Schedule E, proposed Schedule D is structured and formatted based on the specific information to be entered on it.

<sup>79</sup> In addition, proposed Item 6.A. would ask whether the adviser is actively engaged in business as a bank. Recently-enacted legislation requires a bank, or a separately identifiable department or division of a bank, that advises a registered investment company to register with us as an investment adviser. See section 217 of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102 (1999).

<sup>80</sup> Item 12 of Part I of Form ADV currently requires an adviser to provide this information to us for certain control individuals, and to a "jurisdiction" (*i.e.*, a state securities authority) for all individuals giving investment advice in that jurisdiction. See Investment Advisers Act Release No. 991, *supra* note 42 at n.5.

<sup>81</sup> See discussion of Part 2 *infra* at Section II.D.2. of this Release.

<sup>82</sup> Proposed Item 11 of Part 1A.

Many of these amendments update the form, and reflect changes that we have made to Form BD over the years.<sup>83</sup> These changes will also permit advisers that are registered as broker-dealers to electronically copy and link disciplinary disclosure made in response to Form BD on NASDR's CRD system without re-typing the data into the IARD.<sup>84</sup> As proposed, each adviser—

- Would complete a Disciplinary Reporting Page (DRP) if it responds affirmatively to any of the disciplinary questions.<sup>85</sup> We are proposing three DRPs, one each for criminal, civil, and regulatory actions. The DRPs would elicit details regarding each disciplinary event in a structured format and replace

<sup>83</sup> We have substantively amended Form BD several times over the years. When we proposed amendments to Form BD in 1991, we noted that we were considering proposing similar amendments to Form ADV. See Amendments to Form BD, Securities Exchange Act Release No. 29643 (Sept. 3, 1991) (56 FR 44029 (Sept. 6, 1991)).

<sup>84</sup> There will remain, however, differences in the scope of disciplinary reporting between advisers and broker-dealers. Form ADV would continue to require advisers to disclose information about the disciplinary record of the adviser and its "advisory affiliates." The term "advisory affiliate" would continue to be defined to include persons who control or are controlled by the adviser. See Item 11 of Part I of Form ADV and proposed Item 11 of Part 1A. Form BD requires broker-dealers to disclose disciplinary information about the broker-dealer and its "control affiliates." While the term "control affiliate" is defined to include persons who control or are controlled by the broker-dealer, it also includes persons under common control with the broker-dealer. See Explanation of Terms, Form BD at page 2. This difference results from differences between the Advisers Act and the Exchange Act, under which broker-dealers are regulated. Compare Section 202(a)(17) of the Advisers Act (15 U.S.C. 80b-2(a)(17)) (defining "person associated with an investment adviser") and Section 3(a)(18) of the Exchange Act (15 U.S.C. 78c(a)(18)) (defining "person associated with broker").

Another difference between the two terms is that "advisory affiliate" includes all non-clerical employees while "control affiliate" includes only those employees who perform executive duties or have senior policy making authority. Since the disciplinary history of registered representatives of broker-dealers is submitted to NASDR on Form U-4, we previously concluded that it is only necessary for us to require broker-dealers to file on Form BD disciplinary information about broker-dealer employees in "control-type" positions. See Requests for Comments on Proposed Amendments to Broker-Dealer Successor Rules, Securities Exchange Act Release No. 21981 (Apr. 26, 1985) (50 FR 19196 (May 7, 1985)).

<sup>85</sup> In completing Form ADV's disciplinary questions on the IARD, an adviser that is registered as a broker-dealer will be presented with a list of all disciplinary events reported on Disciplinary Reporting Pages (DRPs) to its Form BD. The adviser will indicate which of its Form BD DRPs should be included on its Form ADV. These linked DRPs will be incorporated into the adviser's Form ADV. If the adviser subsequently amends its Form BD and modifies any information in a linked DRP, the IARD will alert the adviser that it must either accept the change for its Form ADV or reject the change and unlink the DRP from its Form BD. If the adviser unlinks a DRP, it must maintain separately the Form ADV DRP and the Form BD DRP.

current Schedules D and E.<sup>86</sup> The structured format, which we currently use in Form BD, is designed to yield better information than the free-text format of the current schedules.<sup>87</sup>

- Would only report disciplinary events occurring in the past ten years.<sup>88</sup> Currently, some questions limit reporting to events that occurred no more than ten years ago, but others have an unlimited reporting period.<sup>89</sup> Our authority to deny or revoke an adviser's registration for the most serious events—those involving criminal convictions—is limited to ten years following conviction,<sup>90</sup> a limitation recently reaffirmed by Congress.<sup>91</sup> Although we have authority to deny or revoke registration based upon lesser (civil or administrative) sanctions

<sup>86</sup> We first replaced Form BD's single DRP with six customized DRPs in 1996. See Form BD Amendments, Securities Exchange Act Release No. 37431 (July 12, 1996) (61 FR 37357 (July 18, 1996)). We recently amended Form BD's DRPs for electronic filing in 1999. See Securities Exchange Act Release No. 41594, *supra* note 3. The three Form BD DRPs that we are not proposing to include with Part 1A of Form ADV relate to disciplinary questions that we are not proposing to ask in Part 1A. The state securities authorities have included two of these questions (Items 2.C. and 2.D. of Part 1B) and a requirement for two corresponding DRPs (bond and judgment/lien) in proposed Part 1B. We recently amended Form BD's DRPs for electronic filing in 1999. See Securities Exchange Act Release No. 41594, *supra* note 3.

<sup>87</sup> Item 11 of Part I currently requires an adviser, for a "yes" answer to one of the disciplinary questions, to describe the action on Schedule E (if the action involved a partnership, corporation or other organization) or Schedule D (if the action involved an individual). Specifically, the adviser must provide the names of the individuals or organizations involved, the title and date of the action, the court or body taking the action, and a description of the action. The information advisers provide has been, in many cases, vague and imprecise. Use of the DRPs has elicited better information from broker-dealers.

<sup>88</sup> This ten-year limit would apply only to disciplinary information required by proposed Item 11 of Part 1A. See proposed Item 11 of Part 1A. Advisers may be required to include disciplinary events that occurred more than ten years ago in their brochure and brochure supplements. See discussion of Part 2A *infra* at Section II.D.2.a. of this Release. At the request of NASAA, state-registered advisers would continue to be required to report events more than ten years old in response to some questions. Each of the three DRPs we are proposing contain the following item: "This DRP should be removed from the ADV record because the event occurred more than ten years ago." Checking this item would result in the DRP being removed from the current information about the adviser. All such DRPs, however, would be retained in the IARD.

<sup>89</sup> The reporting periods for the current items generally reflect our authority to deny or revoke the registration of an adviser. See section 203(e) (15 U.S.C. 80b-3(e)).

<sup>90</sup> See section 203(e)(2) and (3) (15 U.S.C. 80b-3(e)(2) and (3)).

<sup>91</sup> See section 305 of NSMIA (expanding to all felonies our authority to take action against an adviser, while retaining the ten year time limitation) (codified in Section 203(e)(2) and (3) of the Advisers Act).

occurring more than ten years ago, we typically do not use that authority.<sup>92</sup> Over the years, however, we have received many complaints from advisers that are required to report minor disciplinary events occurring decades ago, but that have no other disciplinary events.<sup>93</sup>

- Would not report an unsatisfied judgment or lien; bankruptcy; or bond denial, payout, or revocation.<sup>94</sup> These disclosures generally are not relevant to our authority to grant or deny registration. An adviser also would not report a finding by a self-regulatory organization that the adviser violated a rule designated as “minor” under a plan approved by the Commission if the sanction imposed consists of a fine of \$2,500 or less and the sanctioned person does not contest the fine.<sup>95</sup>

- Would be required to report actions of foreign courts and regulatory authorities,<sup>96</sup> and cease-and-desist orders issued by the Commission.<sup>97</sup>

<sup>92</sup> In response to amendments we proposed to Form BD in 1992, a commenter suggested that we limit all of Form BD’s disciplinary questions to ten years. At that time, we noted that Form BD also is used by the state securities authorities and the self-regulatory organizations, which require the disclosure of disciplinary information dating beyond ten years. We therefore decided not to limit the disciplinary reporting obligation in Form BD. See Adoption of Form Amendments, Securities Exchange Act Release No. 30958 (July 27, 1992) (57 FR 34028 (July 31, 1992)) at n.13.

<sup>93</sup> These advisers have pointed out that had they committed a more serious infraction and been convicted by a court of a crime, Form ADV would not require any reporting.

<sup>94</sup> This information is currently required by Items 11.H., 11.I., 11.J., and 11.K. of Part I. These reporting requirements were originally included in the form to “accommodate the regulatory interests of the (states).” Investment Advisers Act Release No. 991, *supra* note 42 at II.C. We are proposing to amend Part 2 of the form to require advisers (and supervised persons) to disclose to their clients whether they have been the subject of a bankruptcy petition during the past ten years and whether the adviser is in a precarious financial condition. See proposed Items 18.B. and 18.C. of Part 2A, and proposed Item 7 of Part 2B.

<sup>95</sup> See Securities Exchange Act Release No. 30958 (making a similar change to Form BD), *supra* note 92.

<sup>96</sup> See proposed Items 11.A., 11.B., and 11.D. of Part 1A. The International Securities Enforcement Cooperation Act of 1990 (Pub. L. No. 101-550, 104 Stat. 2713 (Nov. 15, 1990) (codified in the Advisers Act at 15 U.S.C. 80b-2(a) and 80b-3)) gave us explicit authority to bar, suspend, or restrict the activities of advisers based on the findings of a foreign court or foreign securities authority. The Exchange Act was similarly amended (codified at 15 U.S.C. 78c(a) and 78o(b)), and Form BD contains substantively similar disclosure requirements. See Securities Exchange Act Release No. 30958, *supra* note 92 at n.11.

<sup>97</sup> See proposed Item 11.C(5) of Part 1A. The Securities Enforcement Remedies and Penny Stock Reform Act (Pub. L. No. 101-429, 104 Stat. 931 (Oct. 15, 1990) (codified in the Advisers Act at 15 U.S.C. 80b-3 and 80b-9)) (Remedies Act of 1990) gave us authority to seek civil monetary penalties in court proceedings and to impose monetary

penalties and order disgorgement in administrative proceedings. The Remedies Act also provided us with both temporary and permanent cease-and-desist authority to prevent violations of the securities laws. The Exchange Act was similarly amended (codified at 15 U.S.C. 78u-2 and 78u-3), and Form BD contains substantively similar reporting requirements. See Securities Exchange Act Release No. 30958, *supra* note 92 at n.12.

<sup>98</sup> These additional reporting requirements result from our proposed definition of the term “proceeding,” which we have incorporated from Form BD. See Broker-Dealer Registration and Reporting, Securities Exchange Act Release No. 31398 (Nov. 4, 1992) (57 FR 53261 (Nov. 9, 1992)). We also are proposing to incorporate from Form BD definitions of the following terms: “charged,” “felony,” “misdemeanor,” “found,” “enjoined,” and “minor rule violation.” See Securities Exchange Act Release No. 37431, *supra* note 86. See also Glossary of Terms included in Appendix A of this Release.

<sup>99</sup> These changes further conform Form ADV’s disciplinary questions to those of Form BD. See Form BD Amendments, Securities Exchange Act Release No. 35224 (Jan. 12, 1995) (60 FR 4040 (Jan. 19, 1995)) (proposing), and Form BD Amendments, Securities Exchange Act Release No. 37431, *supra* note 86 (adopting). Similarly, proposed Item 4, asking whether the adviser is succeeding to the business of a registered investment adviser, would conform to Form BD Item 5. See Adoption of Revised Form BD and Revised Form BDW, Securities Exchange Act Release No. 20406 (Nov. 22, 1983) (48 FR 54436 (Dec. 2, 1983)).

<sup>100</sup> Form ADV currently provides no easy way for an adviser to indicate that a person for whom the adviser has submitted a Schedule D reporting a disciplinary event is no longer employed by the adviser. Each of the three DRPs we are proposing contains the following item: “This DRP should be removed from the ADV record because the advisory affiliate(s) is no longer associated with the adviser.” Checking this item would result in the DRP being removed from the current information about the adviser and thus not available through the public disclosure system. All such DRPs, however, would be retained in the IARD and would be available to regulators.

<sup>101</sup> These schedules to Form BD were adopted in 1992. See Securities Exchange Act Release No. 30958, *supra* note 92. As part of its initial application for registration, an adviser would list its direct owners and executive officers on Schedule A, and if an adviser had indirect owners, these owners would be listed on Schedule B. An adviser with a continuing hardship exemption would use Schedule C to amend the information it filed on Schedules A and B. Advisers will not “complete” Schedule C when filing through the IARD; they will simply make changes on Schedules A and B.

<sup>102</sup> For purposes of Schedule B, the 25% ownership interest is determined based on the form of organization. For a corporation, ownership is based on whether the indirect owner owns 25% or more of a class of voting securities. For a partnership or limited liability company, ownership is based on whether the indirect owner has the right to receive upon dissolution, or has contributed, 25% or more of the partnership’s or limited liability company’s capital.

<sup>103</sup> See Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1 (describing difficulties for foreign-owned broker-dealers to obtain ownership information). An adviser, however, would be required by proposed Item 10 of Part 1A to identify an indirect owner who owns less than 25% of a direct owner but nonetheless can influence the management or policies of the adviser. Cf. Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1(b) (adopting similar reporting requirements for Form BD).

simplify the reporting of indirect interests in the adviser when, for example, the adviser is part of a large corporate structure. An adviser generally would no longer be required to report an indirect owner unless the indirect owner owned twenty-five percent of a direct owner.<sup>102</sup> Similarly, the instructions to these schedules clarify the requirements for imputing beneficial ownership of an adviser for reporting purposes.<sup>103</sup>

<sup>104</sup> 5 U.S.C. 603.

v. *Small Businesses*. We are proposing to add a new Item 12 that would request information we need to determine whether the adviser is a small business. We are required by the Regulatory Flexibility Act to consider the effects of our regulations on small businesses and need to know how many advisers registered with us are small businesses.<sup>104</sup> Generally, only those SEC-registered advisers with assets under management of less than \$25 million would be required to respond to this item.<sup>105</sup>

## b. Part 1B

Part 1B of Form ADV has been prepared by NASAA on behalf of the

Similar to the way the Form BD DRPs submitted by an adviser that also is broker-dealer can be linked to the adviser’s Form ADV, the Schedules A and B for such an adviser would be linked. Because the definition of control is the same for Form BD and Form ADV, however, the information submitted in Schedules A and B by an adviser that is a registered broker-dealer must be the same. IARD therefore will require an adviser that is a registered broker-dealer, in completing its Form ADV on the IARD, to acknowledge and accept every change it makes to its Schedules A and B of Form BD.

<sup>105</sup> See discussion of rule 0-7, *supra* note 61 (definition of “small business” or “small entity” for purposes of the Advisers Act).

state securities authorities. It would require state-registered advisers to provide information about bonding, arbitration actions, other civil and regulatory actions, and whether sole proprietors have taken certain qualifying exams or attained various professional designations. Most of this information is currently required by the state securities authorities.

Only state-registered advisers will be required to complete Part 1B.<sup>106</sup> Completion of this part of the form, therefore, is not an SEC requirement, and Part 1B is not included in this Release as a proposed SEC rule. We will accept any comments and forward them to NASAA for consideration by the state securities authorities.<sup>107</sup>

## 2. Part 2

Currently, Part II of Form ADV contains the requirements for the disclosure statement that advisers must provide to prospective clients and offer to clients annually. The disclosure statement contains information about the adviser's fees, business practices, and conflicts of interest. Advisers are required to provide clients either a copy of Part II or a narrative brochure that contains at least the information required in Part II.<sup>108</sup> Most advisers provide clients with Part II, which asks a series of multiple-choice and fill-in-the-blank questions supplemented in some cases by narrative schedules.

Our experience over the 15 years since Uniform Form ADV was adopted has convinced us that we need a better approach to client disclosure. First, the format of Part II does not lend itself to meaningful, clear disclosure. In some cases, an adviser's response to a question may be accurate but paint an inaccurate picture of its practices. For example, an adviser may truthfully respond to current Item 4.C. by indicating it uses all of the strategies listed by the item, but a client may not appreciate that the adviser's principal strategy involves, for example, risky options trading. In other cases, clients must draw inferences from an adviser having checked a box. For example, if an adviser is paid through commissions on securities that it advises clients to purchase or sell, a checked box in current Item 1.C. will disclose this practice, but not the conflict of interest the adviser has as a result. Advisers can use Part II's narrative schedules to

expand on a check-the-box answer, but the schedules are physically separate from the checked box and are often written in legalese or technical jargon.

Second, because the information in Part II concerns the advisory *firm*, clients may not receive information they want and need about the firm's employees with whom they have contact and on whom they rely for investment advice. In the case of smaller firms, the current disclosure requirements, which focus on the senior executives of the advisory firm, may be adequate.<sup>109</sup> But in a growing number of large advisory firms, clients may never meet the firm's senior executives, who may be located in a different city and may have only an indirect effect on the advice given to the client. We believe clients of these firms may be more interested in the background and qualifications of the individuals with whom they are dealing than in the background and qualifications of executive officers.

We propose to address these concerns (and others, described below) by extensively revising the format of advisers' disclosure requirements. Under the proposed rules, each adviser would be required to give clients a narrative brochure written in plain English.<sup>110</sup> Items in Part 2 would specify the disclosure required in the brochure, but advisers would be generally free to structure the disclosure and order the topics in a manner that best conveys the required information. Our model is Schedule H to Form ADV, which currently requires wrap fee program sponsors to give clients a narrative brochure describing the wrap program.<sup>111</sup> Our experience with the wrap fee brochure suggests that narrative firm brochures will provide advisers' clients with better, more understandable disclosure.

The new adviser brochures would be organized in two parts, a firm brochure and a brochure supplement for each individual who provides advisory services to clients on the adviser's behalf. As described in more detail below, advisers would be required to deliver a brochure to each client, and would be required to deliver an individual's supplement only to those clients to whom that individual will provide advisory services. Part 2A would contain the requirements for the firm brochure, and Part 2B for the brochure supplements.

## a. Part 2A: The Firm Brochure

Each adviser registered with us would be required to deliver its brochure at the start of the advisory relationship,<sup>112</sup> and to offer to deliver the brochure annually.<sup>113</sup> Advisers would be required to use their new brochures and brochure supplements to meet these delivery requirements by the end of the first "roll out" phase of the IARD.<sup>114</sup> To allow advisers to make a smooth transition, we are proposing a further 30-day transition period to allow advisers to provide the new brochures and supplements to existing advisory clients.<sup>115</sup>

The proposed delivery requirements would be very similar to the current ones, with two differences of note.<sup>116</sup> First, we propose to clarify that an adviser acting as the general partner for a limited partnership must provide a brochure to each limited partner.<sup>117</sup>

<sup>112</sup> The adviser would be required to deliver the brochure before or at the time it enters into an advisory agreement with the client. Proposed amended rule 204-3(b)(1)(A) and Instruction 1 to Part 2A. Our proposed rule and the proposed instructions would clarify that the brochure must be delivered whether the advisory agreement is oral or in writing. For a discussion of proposed supplement delivery requirements, see *infra* text accompanying notes 212-215.

<sup>113</sup> Proposed amended rule 204-3(b)(1)(A) and Instruction 1 to Part 2A. Advisers would not be required to deliver or offer a brochure to a client that is a registered investment company or to a client who receives only impersonal advisory services costing less than \$500 per year. These exceptions are contained in current rule 204-3(c)(2) (17 CFR 275.204-3(c)(2)), except that the dollar amount threshold would increase from \$200 to \$500 to reflect the effects of inflation since the rule was adopted in 1979. See Investment Adviser Requirements Concerning Disclosure, Recordkeeping, Applications for Registration and Annual Filings, Investment Advisers Act Release No. 664 (Jan. 30, 1979) (44 FR 7870 (Feb. 7, 1979)).

<sup>114</sup> See proposed rule 204-3(i)(1); see also *supra* text accompanying notes 29-31.

<sup>115</sup> See proposed rule 204-3(i)(2).

<sup>116</sup> Currently, rule 204-3 requires an adviser to deliver the brochure at least 48 hours before entering into the advisory agreement, or at the time of entering into the agreement if the client has the right to terminate the agreement without penalty within five business days thereafter. We are proposing to simply require that the adviser deliver the brochure before or at the time of entering into the agreement. It is our view that an advisory client has a right at any time to terminate the advisory relationship and receive a refund of any prepaid advisory fees that the adviser has not yet earned. See Jason Baker Tuttle, Sr., Initial Decision Release No. 13 (Jan. 8, 1990) (adviser failed to refund prepaid fees to clients); see also Monitored Assets Corp., Investment Advisers Act Release No. 1195 (Aug. 28, 1989) (advisers that refunded prepaid advisory fees only to certain clients violated anti-fraud provisions of the Act).

<sup>117</sup> Proposed Instruction 3 to Part 2A. We understand that some advisers have taken the position that the partnership is the "client" and thus the adviser need only deliver the brochure to the general partner, *i.e.*, itself. This position results, for all practical purposes, in the delivery of no brochure, and is inconsistent with the remedial

<sup>106</sup> State-registered advisers would be required by state rather than federal law to complete Part 1B. See proposed General Instruction 2 to Form ADV.

<sup>107</sup> We request that you clearly indicate in your comment letter which of your comments relate to Part 1B.

<sup>108</sup> Rule 204-3(a) (17 CFR 275.204-3(a)).

<sup>109</sup> Items 5 and 6 of current Part II.

<sup>110</sup> See proposed General Instructions 1 and 2 to Part 2 of Form ADV.

<sup>111</sup> Schedule H to Form ADV; rule 204-3(f)(1) (17 CFR 275.204-3(f)(1)).

Second, we propose to require that updates to the brochure be delivered to clients whenever information in the brochure becomes materially inaccurate.<sup>118</sup> Currently, our rules require initial delivery of the brochure, but require no further brochure delivery unless the client accepts the adviser's annual offer.<sup>119</sup> The anti-fraud provisions of the Act require, however, an adviser to fully disclose information about all material conflicts, which require the adviser to correct previous disclosure about conflicts to clients.<sup>120</sup>

We believe it is incumbent upon an adviser, as a fiduciary, to keep its clients apprised of material changes in its operations, its fees, key advisory personnel, and other information provided in the advisory brochure. Mutual fund shareholders are not required to rely on information in stale prospectuses; we see no reason why advisory clients should rely on stale brochures. Therefore, we are proposing to require that an adviser provide clients with written brochure updates whenever information in the brochure becomes materially incorrect, and include these updates with brochures delivered to prospective clients.<sup>121</sup> These updates can take the form of either a reprinted brochure or a "sticker," a piece of paper identifying

purposes of the rule. The position is, we understand, based on provisions in rule 203(b)(3)-1(a)(2) (17 CFR 275.203(b)(3)-1(a)(2)), which permit an adviser to treat a partnership as a single client under certain conditions. However, that rule is limited by its terms to counting clients for determining eligibility for the "small adviser exception" to the registration requirements. See section 203(b)(3) (15 U.S.C. 80b-3(b)(3)) and Investment Advisers Act Release No. 1633, *supra* note 40 at section II.G. ("rule 203(b)(3)-1 \* \* \* define(s) the term 'client' only for purposes of counting clients under section 203(b)(3) \* \* \* (p)ersons that are grouped together for purposes of (this) section may be required to be treated as separate clients for other purposes under the Advisers Act \* \* \*"). We note the application of the anti-fraud provisions of the Advisers Act to limited partners. See *Abrahamson v. Fleschner*, 568 F.2d 862 (2d Cir. 1977), *cert. denied*, 436 U.S. 913 (1978).

<sup>118</sup> See proposed rule 204-3(f).

<sup>119</sup> The annual offer, and delivery if the client accepts the offer, is required under current rules 204-3(c)(1) and (4).

<sup>120</sup> We have taken enforcement action against advisers under the anti-fraud provisions of the Advisers Act for failing to disclose new conflicts of interest. See, e.g., Renaissance Capital Advisors, Inc., Investment Advisers Act Release No. 1688 (Dec. 22, 1997) (adviser failed to inform clients that it had begun paying for non-research expenses with soft dollar credits).

<sup>121</sup> As discussed below, advisers would be permitted to use a correction slip or "sticker" to update their brochure if they preferred not to revise the brochure itself. Advisers choosing to update using a sticker could deliver just the sticker to existing clients; advisers choosing to revise the brochure would be required to provide the revised brochure to existing clients in order to notify them of the updated information.

the stale information and providing the current information.<sup>122</sup> Advisers that deliver their brochure to clients electronically could also deliver stickers electronically.<sup>123</sup>

As proposed, advisers could use stickers to update a firm brochure in the same way that sponsors of wrap fee programs currently use stickers to update their narrative wrap fee program brochures.<sup>124</sup> Generally, an adviser could use a sticker for any amendment(s) so long as the brochure remains readable and clear. We would, however, require the adviser to revise (and reprint) its brochure each year as part of its annual updating amendment. Thus, the current brochure that the adviser offers clients annually would be a "clean" document that incorporates the text from all existing stickers. We request comment on this proposal. How many stickers would advisers expect to accumulate over one year? How many changes would those stickers effect, and how complex would they be? Would clients be confused if advisers were required to reprint their brochures only every two or three years, rather than every year?

The information required in a firm brochure would be specified by Part 2A of Form ADV.<sup>125</sup> Part 2A would consist

<sup>122</sup> See proposed Instruction 8 to Part 2A. The adviser's choice between reprinting the brochure and using a sticker would apply only to the brochure that the adviser distributes to clients and maintains in its files under our recordkeeping rules. Once the IARD accepts electronic filings of Part 2A, an adviser amending its brochure would be required to refile a revised brochure through the IARD, regardless of whether the adviser has chosen to give clients a sticker or a reprinted brochure. Thus, members of the public viewing the brochure on-line would have access to current information about the adviser.

<sup>123</sup> We have published interpretive guidelines for advisers' delivery of disclosure through electronic media. See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Investment Advisers Act Release No. 1562 (May 9 1996) (61 FR 24644 (May 15, 1996)) (available at <www.sec.gov/rules/concept/33-7288.txt> (last visited Mar. 15, 2000)). Our proposed instructions to Part 2 remind advisers of this option, and provide this website address.

<sup>124</sup> See current Schedule H to Form ADV.

<sup>125</sup> Advisers would be permitted to include non-required information in their brochures, provided it does not obscure required information. For example, an adviser could elect to include in its brochure the annual privacy notice required under section 504 of the Gramm-Leach-Bliley Act. P.L. No. 106-102, 113 Stat. 1338 (1999). The Gramm-Leach-Bliley Act, which was signed into law last November, requires investment advisers (among other financial service providers) in certain circumstances to provide initial and annual privacy notices to individuals. The notices must state (i) the adviser's policies and practices regarding its disclosure of nonpublic personal information to other parties, and (ii) how individuals can "opt-out," that is, prevent the adviser from disclosing

of 19 separate items, each of which elicits required disclosure on a distinct topic.<sup>126</sup> We have drawn the items in Part 2A largely from current Part II, redrafting them as necessary to reflect the narrative format of the new brochure.<sup>127</sup> Some Part 2A items are new, or have been revised to reflect new concerns or developments in the investment adviser industry. Much of the information required in the proposed narrative brochure concerns an adviser's conflicts of interest with its clients, and is disclosure the adviser already must make to clients, as a fiduciary, under the anti-fraud provisions of the Advisers Act.<sup>128</sup> Thus, many of the proposed disclosure items will serve to give advisers guidance on fulfilling their statutory disclosure obligations to clients.

The items in proposed Part 2A will not, of course, cover every possible conflict. As a result, delivering a brochure (and supplements) prepared in accordance with Part 2 may not fully satisfy an adviser's disclosure obligations. We make this point clear in both the proposed Form and brochure

their information to nonaffiliated third parties. The Commission proposed rules implementing these privacy notice requirements on March 2, 2000. See Privacy of Consumer Financial Information (Regulation S-P), Investment Advisers Act Release No. 1856 (Mar. 2, 2000) [65 FR 12354 (Mar. 8, 2000)]. Advisers that use their brochure to transmit their annual privacy notice would, of course, need to deliver, not merely offer, the brochure each year.

<sup>126</sup> Proposed Part 2A has a main body and an appendix, Appendix 1. Appendix 1 contains the requirements for a specialized type of firm brochure—a wrap fee program brochure. As discussed below, Appendix 1 would require disclosure similar to that required by current Schedule H. In the main body of Part 2A, an additional item, Item 20, sets out additional disclosure that state securities authorities will require of advisers registered with them. Advisers registered only with us would be required to respond only to Items 1 through 19. Item 20 of Part 2A would be a state, rather than an SEC, requirement and therefore we are not requesting comment on it. We will, however, pass on to NASAA any comments we receive on Item 20.

<sup>127</sup> In addition, we propose to move other disclosure requirements from current Part II into new Part 2B, for the brochure supplement, and to delete some current Part II items we believe are no longer necessary. We have redrafted the instructions to Part 2 to make them easier to understand and to clarify advisers' obligations under the Advisers Act. The proposed instructions remind advisers that they are fiduciaries and have an obligation to make full and fair disclosure of all material conflicts with clients. The instructions require advisers to use plain English principles in drafting their brochures, provide guidance on preparing different brochures for different clients, explain the special rules for preparing wrap fee brochures, and explain how advisers without an operating history should respond to items. The instructions also explain the brochure rule's delivery requirements, explain brochure updating requirements, remind advisers that under certain conditions they can deliver the brochure electronically, and explain our filing requirements.

<sup>128</sup> Section 206 (15 U.S.C. 80b-6).

rule.<sup>129</sup> We request comment whether there are other common disclosures advisers make to clients that we should also include in the items of Part 2.

*Item 1. Cover Page.* The brochure cover page would be required to identify the advisory firm, its business address, and telephone number; the date of the brochure; and the name of a person who can be contacted for further information. The cover page would also include a statement that the brochure has not been approved by the Commission or any state securities authority. If the adviser holds itself out as being "registered," the cover page must also explain that registration does not imply that the adviser possesses a certain level of skill or training.<sup>130</sup> The cover page would also provide the address of a web site so that a client or prospective client can obtain additional information about the adviser through the IARD.

*Item 2. Material Changes.* The brochure would include a summary of material changes since its last annual update, to help clients identify new or revised information. The summary would appear on the cover page of the brochure or immediately thereafter, or could be included in a separate letter sent to clients accompanying the brochure.<sup>131</sup>

*Item 3. Table of Contents.* The new brochures would include a table of contents detailed enough to permit clients to locate topics easily.

*Item 4. Advisory Business.* Advisers would be required to include background information about the advisory firm, including how long it has been in business and the names of its principal owners. The brochure would also describe the firm's advisory business—the types of advisory services offered, whether the adviser tailors services to clients' individual needs,

and whether clients may impose individual investment restrictions.<sup>132</sup>

We are not proposing to require all advisers to disclose the details of how they manage client assets. For many advisers, descriptions of how they formulate advice or manage client portfolios are likely to be either too generalized or too client-specific to be helpful. However, we propose to require an adviser that holds itself out as specializing in a particular service to explain its specialty in detail,<sup>133</sup> and to require an adviser that provides advice about only limited types of securities to explain its services and their limitations. In addition, advisers that manage assets would disclose the amount they manage with investment discretion, and the amount without. Wrap fee portfolio managers would explain any differences in their portfolio management for wrap fee and non-wrap clients, as well as identifying the wrap programs they participate in and disclosing that they receive part of the wrap fee.<sup>134</sup>

*Item 5. Fees and Compensation.* The brochure would describe how the adviser is paid for providing advisory services.<sup>135</sup> The adviser would be required to disclose its fee schedule, disclose whether fees are negotiable, discuss whether the firm bills clients or deducts fees directly from the clients' accounts, and explain how often the firm assesses fees. Advisers charging fees in advance would also be required to explain how they calculate and refund prepaid fees when a client contract terminates.<sup>136</sup>

Advisory clients may not appreciate that they will bear other costs in addition to advisory fees. Thus, in addition to information about advisory fees, we propose to require the brochure to describe the types and amounts (or ranges) of other costs, such as brokerage, custody fees, and fund expenses, that

clients may pay in connection with advisory services.

In some cases, the type of compensation an adviser receives will involve a conflict of interest. An adviser that receives commissions or other payments for sales of securities to clients (transaction-based compensation) has a serious conflict of interest with its clients.<sup>137</sup> This practice gives the adviser and its personnel an incentive to base investment recommendations on the amount of compensation they will receive rather than on the client's best interests.<sup>138</sup> We propose to require advisers who receive transaction-based compensation (or whose personnel receive transaction-based compensation) to disclose this practice and the conflict of interest, and to describe the firm's control procedures for addressing the conflict.<sup>139</sup> Item 5 would also require these advisers to disclose that clients may purchase the same securities or investment products from other brokers.<sup>140</sup> Should proposed Item 5 also require an adviser to discuss its conflict of interest in charging performance or incentive fees, or should

<sup>137</sup> A congressional committee has characterized the practice of an adviser receiving transaction-based compensation as "(o)ne of the most serious and frequent conflicts of interest that advisers have with clients." H.R. Rep. No. 75, 103d Cong., 1st Sess. 19 (1993).

<sup>138</sup> Because of this conflict, advisers are required by the anti-fraud provisions of the Advisers Act to disclose their receipt of such compensation to clients. We have brought enforcement actions against advisers who failed to make such disclosures. See Carona & Hodges Management, Inc., and James G. Carona, Investment Advisers Act Release No. 1403 (Feb. 8, 1994) (adviser invested client assets in risky, developmental-stage companies without disclosing that the adviser received loan fees from those companies for doing so); Westmark Financial Services Corp., Investment Advisers Act Release No. 1117 (May 17, 1988) (adviser and principal failed to state that they would receive commissions on certain securities they recommended to clients); and John S. Lalonde, Investment Advisers Act Release No. 1103 (Jan. 25, 1988) (adviser failed to disclose commissions received on sales of limited partnership interests).

<sup>139</sup> As discussed below, advisers may engage in practices that must be disclosed under both proposed Item 5 and proposed Item 10.A., which would require disclosure when the adviser has a financial interest in securities that it recommends to clients, or under both proposed Item 5 and proposed Item 13, which would require disclosure when the adviser receives an economic benefit from a non-client. A brochure would not need to repeat information simply because the information is responsive to more than one item.

<sup>140</sup> E.g., Westmark Financial Services Corp., Investment Advisers Act Release No. 1117 (May 16, 1988) (adviser failed to disclose that clients could purchase securities from other broker-dealer). In addition, an adviser that receives more than 50% of its revenue from commissions and other sales-based compensation would explain that commissions are the firm's primary (or, if applicable, exclusive) form of compensation, and an adviser that charges both advisory fees and commissions would disclose whether it reduces its fees to offset the commissions.

<sup>129</sup> See proposed General Instruction 3 to Part 2; proposed rule 204–3(g).

<sup>130</sup> We have observed that the emphasis on SEC registration, in some advisers' marketing materials, appears to suggest that registration either carries some official imprimatur or indicates that the adviser has attained a particular level of skill or ability. Section 208(a) of the Advisers Act (15 U.S.C. 80b–8(a)) makes such suggestions unlawful. See, e.g., Money Machine, Investment Advisers Act Release No. 783 (Nov. 12, 1981) (adviser violated section 208(a) by representing or implying that the Commission had passed upon the adviser's abilities and qualifications); Advanced Analysis, Inc., Investment Advisers Act Release No. 397 (Jan. 18, 1974) (adviser violated section 208(a) by representing that the Commission had passed upon the adviser's qualifications and methods of security analysis).

<sup>131</sup> An adviser including the summary in a separate letter to clients would not be required to file the letter with us, but a proposed amendment to our recordkeeping rule would require the adviser to preserve a copy. See proposed rule 204(a)(14)(i).

<sup>132</sup> Proposed Item 4, together with proposed Item 7, incorporate requirements of current Item 3 of Part II. Proposed Item 4 also incorporates requirements of current Items 1.A. and 1.D. of Part II.

<sup>133</sup> In response to proposed Item 7, advisers offering specialized services would also be required to disclose any specific risks their specialty involves. See discussion of proposed Item 7, *infra*, text accompanying notes 143–144.

<sup>134</sup> Proposed Item 4.F. Item 4.F. would apply only to advisers that *manage portfolios* in wrap fee programs; these advisers would provide wrap fee clients with their regular firm brochure. Advisers that *sponsor* wrap fee programs would prepare a separate "wrap fee brochure" for their wrap fee clients in compliance with Part 2A Appendix 1. See *infra* text accompanying note 202.

<sup>135</sup> Proposed Item 5 incorporates requirements of current Items 1.C., 1.D., and 9.B. of Part II.

<sup>136</sup> Advisers must refund prepaid unearned advisory fees to clients when the advisory relationship terminates. See, e.g., Jason Baker Tuttle, Sr., *supra* note 116.

we continue to rely on anti-fraud provisions to require disclosure when this type of fee structure presents a material conflict?<sup>141</sup>

*Item 6. Types of Clients.* The brochure would describe the types of advisory clients the firm generally has. The adviser would also disclose its requirements, such as minimum account size, for opening or maintaining an account.<sup>142</sup>

*Item 7. Methods of Analysis, Investment Strategies and Risk of Loss.* Item 7 would require the brochure to describe the adviser's methods of analysis and investment strategies. As noted earlier, Item 4 of Part II currently asks for the adviser's methods of analysis, sources of information, and investment strategies through a series of check boxes. The current format necessarily covers a limited number of analytical methods and strategies. Moreover, clients may not appreciate the meaning of the methods listed, or may not understand the implications for how client accounts are actually managed using a particular method.<sup>143</sup> We believe that an adviser's narrative description will provide clients with more useful information.

We are also proposing that the brochure discuss the risks clients face in following the adviser's advice or permitting the adviser to manage assets. Advisers that offer a wide variety of advisory services could simply explain that investing in securities involves a risk of loss; we would not require these advisers to list the risks involved in each type of security or trading strategy. Advisers that use primarily a particular method of analysis, strategy, or type of security would be required to explain the specific risks involved,<sup>144</sup> with more detail if those risks are significant or unusual.

*Item 8. Disciplinary Information.* We propose to require an adviser's brochure to disclose information about the firm's disciplinary history. This disclosure would include descriptions of, among other events, any convictions for theft, fraud, bribery, perjury, forgery and violations of securities laws by the adviser or one of its executives.

<sup>141</sup> See Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) (63 FR 39022 (July 21, 1998)).

<sup>142</sup> Proposed Item 6 incorporates requirements of current Items 2 and 10 of Part II.

<sup>143</sup> See current Item 4 of Part II. Proposed Item 7 also incorporates requirements of current Item 3 of Part II.

<sup>144</sup> Advisers whose primary strategy involves frequent trading would have to explain how the strategy may affect performance, due to higher transaction costs and taxes.

Disciplinary events such as these reflect on the integrity of the adviser and its management persons. Thus, disclosure of this information is material to clients.

Although we have long viewed the anti-fraud provisions of the Advisers Act as requiring advisers to disclose disciplinary information,<sup>145</sup> we have not required this disclosure to be included in Part II of Form ADV or the client brochure.<sup>146</sup> One of our anti-fraud rules, rule 206(4)-4, requires advisers to inform clients and prospective clients promptly about any "legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients."<sup>147</sup> The rule provides a list of events that are presumed to be material if they occurred in the previous ten years.<sup>148</sup> The adviser may (but is not required to) make this disclosure in its brochure, and may make it orally.

Information about an adviser's illegal or unethical conduct is very important to a client who is deciding whether to engage or continue to engage the adviser. When assessing whether an adviser will fulfill its obligations to clients, an investor would likely give great weight to whether the adviser has met its fiduciary and other legal obligations in the past. Because of the importance of this information to clients, we are proposing to require it be in writing and included in the brochure along with other material information

<sup>145</sup> See, e.g., Jesse Rosenblum, Investment Advisers Act Release No. 913 (May 17, 1984) (adviser who failed to tell prospective clients about an injunction obtained against the adviser by state securities authority "omitted a material fact that was essential to an evaluation of his qualifications as an investment adviser \* \* \* (and that) investors surely would have wanted to know (about the injunction) before entrusting their funds to (the adviser's) management").

<sup>146</sup> When we proposed Uniform Form ADV in 1985, we considered requiring advisers' brochures to contain substantially the same disciplinary information advisers must report to us, which includes disciplinary information not only about the adviser and its management persons but also about its advisory personnel. Uniform Investment Adviser Registration Application Form, Investment Advisers Act Release No. 967 (Apr. 24, 1985) (50 FR 18500 (May 1, 1985)). When we adopted Uniform Form ADV later in 1985, we excluded this requirement because of concerns that, in some cases, the information could be voluminous. Investment Advisers Act Release No. 991, *supra* note 42. Under the current proposal, as discussed above, the disciplinary information in the firm's brochure would be limited to information about the firm and its management persons and, as discussed below, would be similar to that currently presumed to be material under rule 206(4)-4. Disciplinary information about advisory personnel would be included in brochure supplements. See discussion of proposed Item 3 of Part 2B, *infra* Section II.D.2.b. of this Release.

<sup>147</sup> Rule 206(4)-4(a)(2) (17 CFR 275.206(4)-4(a)(2)).

<sup>148</sup> Rule 206(4)-4(b) (17 CFR 275.206(4)-4(b)).

about the adviser.<sup>149</sup> A writing requirement will also permit us to better monitor compliance with this disclosure requirement.<sup>150</sup> We request comment on this proposal, specifically whether disciplinary information should appear in a separate written document accompanying the brochure, rather than the brochure itself, in order to highlight its importance to advisory clients. We also request comment whether there are other approaches to achieve these same disclosure and compliance objectives.

We have modeled proposed Item 8 on rule 206(4)-4, which we propose to rescind. Item 8 would require an adviser's brochure to disclose all material facts about any legal or disciplinary event material to evaluating the adviser's business or the integrity of its management. An adviser must *presume* that certain disciplinary events described in Item 8 are material if the event involved the adviser or a management person and occurred in the previous ten years.<sup>151</sup> The adviser may overcome (rebut) this presumption, in which case no disclosure is required. A note in Item 8 would explain four factors the adviser should consider when assessing whether the presumption can be rebutted.<sup>152</sup> We

<sup>149</sup> In addition, the IARD will permit a client or prospective client to view an adviser's reports of disciplinary events in response to proposed Item 11 of Part 1A of Form ADV. However, we would not rely on the IARD to inform clients and prospective clients of disciplinary events. We believe that advisers have an affirmative obligation under the Advisers Act to disclose material disciplinary events to clients and prospective clients, and that clients and prospective clients should not bear the burden of engaging in such a search (and updating it continuously). We also note that proposed Item 8 of Part 2A and current rule 206(4)-4 both require disclosure of all material disciplinary events, which is broader than proposed Item 11 of Part 1A would require.

<sup>150</sup> Under rule 206(4)-4, an adviser must disclose a disciplinary event to clients "promptly." As a result, including this information in the brochure (under current rules) may not satisfy rule 206(4)-4, because the brochure must only be delivered to clients at the beginning of the advisory relationship and offered annually thereafter. See note appended to rule 206(4)-4. Our proposed revisions to the updating requirement would resolve the differences in the delivery requirements. See *supra* Section II.D.2.a. of this Release.

<sup>151</sup> An adviser's "management persons" are anyone with the power to exercise, directly or indirectly, a controlling influence over the adviser's management or policies, or to determine the general investment advice given to the adviser's clients. See Glossary of Terms, definition of "management person."

<sup>152</sup> These factors are: (1) The proximity of the person involved in the disciplinary event to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. These are the same factors advisers use to determine materiality under current rule 206(4)-4. See Financial and Disciplinary Information that

propose to require advisers registered with us to keep a file memorandum if the adviser does not disclose an event described in Item 8. The memorandum will memorialize the adviser's determination, avoid later disagreements as to the basis for the determination, and better permit our staff to monitor compliance with this important disclosure requirement.<sup>153</sup>

We are proposing several revisions to the provisions in the list of disciplinary events that would move from rule 206(4)-4 into new Item 8. First, we would update some of the provisions to reflect changes in the law.<sup>154</sup> Second, we would make certain clarifying revisions to the listed events.<sup>155</sup> Finally, we would require an adviser subject to one of our administrative orders to provide clients and prospective clients with a copy of that order for a period of one year following the date of the order.<sup>156</sup>

Investment Advisers Must Disclose to Clients, Investment Advisers Act Release No. 1083 (Sept. 25, 1987) (52 FR 36915 (Oct. 2, 1987)).

<sup>153</sup> The memorandum would be required to explain the adviser's determination and to discuss the four factors set forth in Item 8. Proposed rule 204-2(a)(14)(ii). Proposed Item 3 of Part 2B requires a brochure supplement to contain disclosure of legal or disciplinary events involving the adviser's supervised persons. Proposed rule 204-2(a)(14)(ii) would require the same memorandum in the event the adviser does not disclose an event described in Item 3 of Part 2B.

<sup>154</sup> First, all felonies (not only those involving investment-related statutes) would be presumed material. Congress amended section 203 of the Advisers Act in 1996 to permit us to deny or revoke an adviser's registration, or bar, suspend or limit an adviser's activities, if the adviser has been convicted of any felony within the past ten years. Section 305 of NSMIA, *supra* note 91. Current Item 11.A. of Part I already requires advisers to report all felonies to us. Second, actions of foreign courts and financial regulatory authorities would be included. Congress's 1990 amendments to the Advisers Act permit us to deny or revoke an adviser's registration, or bar, suspend or limit an adviser's activities based on the findings of a foreign court or foreign securities authority. *See supra* note 96. Third, monetary penalties in administrative proceedings would be required to be disclosed. Congress gave us authority to impose monetary penalties in administrative proceedings in the Remedies Act of 1990. *See supra* note 97.

<sup>155</sup> These proposed changes clarify that: (a) A conviction for conspiracy to commit any felony or to commit any listed misdemeanor is a criminal conviction that must be disclosed; (b) a military court is a court of competent jurisdiction; and (c) an order enjoining the adviser or a management person from violating an investment-related statute, rule, or order must be disclosed. *See* proposed Item 8.A. We have also added explanatory text to the definition of "management person." *See* Glossary of Terms, definition of "management person."

<sup>156</sup> This requirement would apply if the date of the order is on or after the effective date of these revisions to Form ADV. As a condition of settlement in administrative proceedings against certain investment advisers, we have required the advisers to send copies of our orders to existing clients and, for one year, to prospective clients. *E.g.*, Capital Markets Research Co., Investment Advisers Act Release No. 1834 (Sept. 27, 1999); Boston

Rule 206(4)-4 requires an adviser to disclose a civil action in which the adviser is found to have violated an investment-related statute.<sup>157</sup> Today, however, many disputes between securities firms and their customers are resolved through arbitration or other alternative dispute resolution, rather than civil lawsuits. As a result, there may now be more violations of investment-related statutes that are not presumed to be material under rule 206(4)-4 and therefore are not typically disclosed to clients. In Item 20 of Part 2A, state securities authorities have included a requirement that state-registered advisers disclose certain arbitration liability if the claim was in excess of \$2,500. Should we include a similar requirement in Item 8? If so, should our requirement be limited to arbitration awards for \$2,500 rather than claims for \$2,500? Should the amount be higher? Since some arbitrators may not issue reports of their findings, how should we draft Item 8 to distinguish arbitrations involving matters that do not reflect upon the integrity of the adviser (such as some contract disputes), from those that do? Should we limit the requirement to arbitrations in which the arbitrator finds a violation of an investment-related statute? If we do, will advisers and their affiliates decline to agree to use arbitrators who make findings?

*Item 9. Other Financial Industry Activities and Affiliations.* We propose to require advisers to disclose information about their other financial industry activities and affiliations. These other activities and affiliations may create conflicts of interest between the advisory firm and its clients, and may impair the objectivity of the investment advice given.

Proposed Item 9 would require an adviser to disclose whether it (or any of its management persons) is registered or has applied to register as a broker or commodities professional. The brochure would also describe material

arrangements the adviser (or any of its management persons) has with related financial industry participants. Advisers must currently provide similar disclosure under Item 8 of Part II. The brochure would also describe any material conflict of interest with advisory clients that the relationship or arrangement creates with clients, and the restrictions or other control procedures the adviser uses to address the conflict.<sup>158</sup> In addition, if the adviser selects or recommends other advisers for clients, proposed Item 9 would require disclosure of any compensation arrangements and other business relationships between the two advisory firms, as well as of the conflicts created.

*Item 10. Participation or Interest in Client Transactions; Personal Trading.* Item 10 would require the brochure to discuss the conflicts of interest the adviser faces when the advisory firm or a "related person" has a financial interest in, or trades in, securities they recommend to clients.<sup>159</sup> Advisers would be required to disclose any practices giving rise to these conflicts, the nature of the conflicts presented, and any procedures and controls the adviser uses to address the conflicts.<sup>160</sup>

Proposed Item 10 is designed to shed sunlight on two types of practices that can harm advisory clients. The first is

<sup>158</sup> Brochure supplements would be required to contain similar disclosure, concerning the other business activities of the adviser's supervised persons. *See* proposed Item 4 of Part 2B and the discussion below at Section II.D.2.b. of this Release.

<sup>159</sup> This item incorporates many of the disclosure requirements of Item 9 of Part II. An adviser's related persons are: (1) the adviser's officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling, controlled by, or under common control with the adviser; (3) all of the adviser's current employees; and (4) any person providing investment advice on the adviser's behalf.

<sup>160</sup> Many advisers have extensive procedures in place to monitor and control employees' personal securities trades and financial interests; these procedures may include pre-clearance, restricted lists, blackout periods, or periodic reporting. Section 204A (15 U.S.C. 80b-204a) of the Advisers Act requires most advisers to establish policies and procedures to prevent misuse of material, nonpublic information, and rules 204-2(a)(12) and (13) (17 CFR 275.204-2(a)(12) and (13)) require advisers to keep records of their securities transactions and those of their "adviser representatives." In addition, our rules under the Investment Company Act require advisory firms that advise registered investment companies to adopt a written "code of ethics" to address conflicts arising out of personal trading, and to file those codes with us. We recently revised those rules in order to provide greater protection against improper personal trading by persons who have access to information about mutual funds' purchases and sales of securities. Investment Company Release No. 23958 (adopting amendments to rule 17j-1 under the Investment Company Act (17 CFR 270.17j-1)), *supra* note 2.

Investment Counsel, Inc., Investment Advisers Act Release No. 1801 (June 10, 1999); Valicenti Advisory Services, Inc., Investment Advisers Act Release No. 1774 (Nov. 18, 1998); Renaissance Capital Advisors, Inc., Investment Advisers Act Release No. 1688 (Dec. 22, 1997); Account Management Corporation, Investment Advisers Act Release No. 1529 (Sept. 29, 1995). Because our orders include findings of the facts underlying the violations, requiring that a client receive a copy of that order provides us with greater assurance that the client will be accurately informed of the adviser's behavior. The Second Circuit recently affirmed our authority to impose this form of remedy. *Valicenti Advisory Services, Inc. v. SEC*, No. 99-4002, 1999 U.S. App. LEXIS 35879 (Nov. 30, 1999, amended Feb. 9, 2000) (*per curiam*).

<sup>157</sup> Rule 206(4)-4(b)(1)(ii) (17 CFR 275.206(4)-4(b)(1)(ii)).

when an advisory firm (or a related person) has a material financial interest in an issuer of securities it recommends to clients. For example, the adviser may recommend that clients invest in an investment company that the firm advises, or a partnership for which the firm is the general partner.<sup>161</sup> Similarly, the adviser may recommend that a client buy securities in a public offering underwritten by the adviser's affiliate. Or, an adviser with a material financial interest in a company may recommend that a client buy shares in that company's public offering, when the success of the offering could increase the value of the adviser's investment.<sup>162</sup> An adviser engaging in these practices has an incentive to base its advice on its own financial interests rather than the interests of clients, and the proposed item is designed to help a client understand the conflict. Item 10.A. would require full disclosure of these conflicts and provide guidance on the types of conflicts covered.<sup>163</sup> We request comment whether additional guidance would be useful to advisers.

The second practice involves personal trading abuses. Because of the information they have, advisers and their personnel can "front run" client trades or otherwise abuse their positions. For example, an adviser may be able to sell (or sell short) its own position in a security in advance of large client sell orders that could be expected to drive down the price of that security. Similarly, an adviser may acquire a position in a stock, advise clients to buy the same stock, and profit by the resulting increase in price.<sup>164</sup> These practices not only may affect the adviser's recommendations, but also can harm clients by affecting adversely the prices at which clients buy or sell securities.

Under proposed Item 10.B., an adviser would disclose whether it or a related

person (e.g., advisory personnel) invest—or are permitted to invest—in the same securities as their clients, or in related securities such as options or other derivatives.<sup>165</sup> Firms engaging in or permitting this practice would discuss the conflicts presented, and describe the firm's restrictions and/or internal procedures to address the conflicts. Item 10.C. would require a similar discussion, but focus on the specific conflicts an adviser has when it (or a related person) trades in the same securities at or about the same time as a client. In response to this item, an adviser might explain how its internal controls prevent the firm and its staff from buying or selling securities in advance of client transactions.

*Item 11. Brokerage Practices.* Item 11 would require the brochure to describe the adviser's policies and practices in selecting brokers for client transactions, and in determining the reasonableness of brokers' compensation. As we explain in more detail below, the item would require the adviser to disclose its policies and practices with respect to "soft dollars," i.e., the receipt of benefits such as research for the allocation of client brokerage.

*Soft Dollar Practices.* Advisers often receive "soft dollar" benefits from using particular brokers for client trades.<sup>166</sup> Client brokerage, however, is an asset of the client—not of the adviser. When, in connection with client brokerage, an adviser receives products or services that it would otherwise have to produce itself (or pay for), the adviser's interest may conflict with those of its clients. For example, soft dollar arrangements may cause an adviser to violate its best execution obligation by directing client transactions to brokers who are not able to adequately execute the transactions, or may give the adviser incentive to trade client securities more often than it would absent the benefits the adviser receives. Because of these conflicts, we have required advisers to disclose their policies and practices on use of client brokerage to obtain soft dollar benefits.<sup>167</sup>

<sup>165</sup> Some situations, such as when an adviser owns shares in a company it recommends to clients, may be covered by both proposed Items 10.A. and 10.B. Others, such as when an adviser sells its holdings of a security it purchases for clients, would come under 10.B, and potentially 10.C. A brochure would not need to repeat disclosure simply because it is responsive to more than one item.

<sup>166</sup> Section 28(e) of the Exchange Act (15 U.S.C. 78bb(e)) provides a limited "safe harbor" for advisers with discretionary authority in connection with their receipt of soft dollar benefits. See discussion of this safe harbor, *infra* note 176.

<sup>167</sup> Item 12 of current Part II.

During 1997–98, our staff conducted a wide-ranging examination of advisers' soft dollar practices and disclosure. Our Office of Compliance Inspections and Examinations found widespread use of soft dollars by investment advisers that manage client portfolios.<sup>168</sup> The Office concluded that advisers' disclosure often failed to provide sufficient information for clients or potential clients to understand the adviser's soft dollar practices and the conflicts those practices present. In its report, the Office noted that most advisers' descriptions were simply boilerplate, and urged that we consider amending Form ADV to require better disclosure.<sup>169</sup> Today we are acting on those recommendations.<sup>170</sup>

Item 11 would require an adviser that receives research or other products or services in connection with client securities transactions (soft dollar benefits) to disclose the adviser's practices and discuss the conflicts of interest that result.<sup>171</sup> The brochure's description of soft dollar practices must be specific enough for clients to understand the types of products or services the adviser is acquiring and permit them to evaluate conflicts.<sup>172</sup> Disclosure must be more detailed for products or services not used in the adviser's investment decision-making process.

Item 11 would describe the types of conflicts the adviser must disclose when it accepts soft dollar benefits,<sup>173</sup> and

<sup>168</sup> Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds (Sept. 22, 1998) (Soft Dollar Report).

<sup>169</sup> *Id.* at 3, 50–51.

<sup>170</sup> The Office also recommended further rulemaking in this area, which we may consider in the future. Among the suggestions detailed in the Soft Dollar Report were: (a) requiring advisers to provide clients with client-specific itemizations of soft dollar benefits the adviser received during the previous period, and (b) requiring advisers to maintain certain records of soft dollar benefits received and the adviser's allocation of so-called "mixed-use" items between research and non-research functions. *Id.* at 49–51.

<sup>171</sup> The soft dollar benefits covered include any research, products or services, whether created or developed by the broker-dealer itself or by a third party. See note to proposed Item 11.A.1. of Part 2A.

<sup>172</sup> In this regard, the proposed item would incorporate the standard for advisers we set out in our 1986 interpretive release on soft dollars. Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Release No. 23170 (Apr. 23, 1986) (1986 Soft Dollar Release).

<sup>173</sup> An adviser accepting soft dollar benefits would have to explain that (a) the adviser benefits because it does not have to produce or pay for the research, other products, or services acquired with soft dollars, and (b) the adviser therefore has an incentive to select or recommend broker-dealers based on the adviser's interest in receiving these benefits, rather than on the client's interest in getting the best execution services at the lowest available rates.

<sup>161</sup> See Thomson McKinnon Asset Management, L.P., Investment Advisers Act Release No. 1243 (July 26, 1990) (adviser failed to disclose that it received advisory fees from a money market fund into which it "swept" clients' cash balances).

<sup>162</sup> See, e.g., Chancellor Capital Management, Inc., Investment Advisers Act Release No. 1447 (Oct. 18, 1994) (adviser failed to disclose, when recommending publicly traded securities of an issuer to client, that adviser's related person owned non-publicly traded securities of the same issuer).

<sup>163</sup> We are proposing an exception, in Item 10.A., for advisers' investments in mutual funds that they recommend to clients. These investments typically do not raise conflicts because the securities are valued at their net asset value; however, an adviser would still be required to disclose the conflict created when it receives a fee from a fund it recommends to clients. See Example 3 of proposed Item 10.A. See Thomson McKinnon, *supra* note 161.

<sup>164</sup> See Roger Honour, Investment Advisers Act Release No. 1527 (Sept. 29, 1995).

require the adviser to disclose its procedures for directing client transactions to brokers in return for soft dollar benefits.<sup>174</sup> The item would require the adviser to explain whether it uses soft dollars to benefit all clients<sup>175</sup> or just those accounts whose brokerage “pays” for the benefits, and whether the adviser seeks to allocate the benefits to client accounts proportionately to the brokerage credits those accounts generate. The item would also require the adviser to explain whether it “pays up” for soft dollar benefits.<sup>176</sup>

**Client Referrals.** The brochure would also be required to discuss the adviser’s practice in using client brokerage to reward brokers that refer clients.<sup>177</sup> This practice also presents advisers with serious conflicts of interest since they may have a bias towards referring brokers. The brochure would have to disclose this practice, the conflict it creates, and any procedures the adviser used to direct client brokerage to referring brokers during the last fiscal year, *i.e.*, the system of controls used by the adviser when allocating brokerage.

**Transaction Costs.** Clients engaging an adviser can benefit when the adviser negotiates lower commissions or “bunches” trades to obtain volume discounts on execution costs.<sup>178</sup> Item 11

would require the adviser to describe these practices. If the adviser does not bunch trades when it has the opportunity, the brochure would be required to explain that clients may pay higher brokerage costs. Similarly, if the adviser does not negotiate commissions, or limits the extent to which it negotiates them, the brochure would be required to explain that clients may pay higher brokerage costs as a result.<sup>179</sup>

**Directed Brokerage.** Clients sometimes instruct their adviser to send transactions through a specific broker. Clients may initiate this type of arrangement for a variety of reasons: the client may wish to favor a family member or friend, or the client may be using its own brokerage to pay for services the broker provides to the client.<sup>180</sup> But the arrangement may also be initiated by the adviser, who may benefit, for example, when brokerage is directed to its affiliated broker-dealer. In either case, clients directing (or agreeing to direct) brokerage need to understand the consequences of directing brokerage, including the possibility that their accounts will pay higher commissions and receive less favorable execution.<sup>181</sup>

If an adviser *permits* clients to direct brokerage, we would require the brochure to explain that the adviser may be unable to get best execution, and that directing brokerage may cost clients more money. If, however, the adviser *routinely requests or requires* clients to direct brokerage, the brochure would also be required to describe the adviser’s policy or practice, to disclose that not all advisers require directed brokerage, and to discuss any broker-dealer

disclose allocation policies that disadvantage a client. *See* Account Management Corporation, *supra* note 156 (adviser failed to disclose that it allocated shares in “hot” initial public offerings only to limited number of eligible client accounts); *cf.* Nicholas Applegate Capital Management, Investment Advisers Act Release No. 1741 (Aug. 12, 1998) (adviser failed to supervise senior trader who allocated profitable day trades to his own personal account rather than to client account).

<sup>179</sup> Proposed Item 11.B. *See* Mark Bailey & Co., Investment Advisers Act Release No. 1105 (Feb. 24, 1988) (adviser that failed to disclose that it did not negotiate commissions on directed trades, failed to disclose that the adviser would be in a better position to negotiate commissions in batched transactions for non-directed trades, and failed to inform clients that commissions might be lower on non-directed trades, violated anti-fraud provisions of Advisers Act).

<sup>180</sup> A client may also direct its transactions to a broker that agrees to make cash rebates to the client. As noted in the Soft Dollar Report, this directed brokerage practice is referred to as “commission recapture.” Soft Dollar Report, *supra* note 168 at n.42. We are proposing a separate disclosure requirement, discussed below, relating to commission recapture.

<sup>181</sup> 1986 Soft Dollar Release, *supra* note 172 at n.44.

relationship that creates a material conflict of interest.<sup>182</sup>

**Commission Recapture.**<sup>183</sup> An adviser that sends brokerage to a firm providing commission recapture would describe how recapture works, explain the benefits of recapture, and explain how a client could participate in recapture. We request comment on this disclosure requirement: which types of clients can generally participate in commission recapture programs, and how do clients currently learn that such programs are available?

**Item 12. Review of Accounts.** The brochure would disclose whether, and how often, the adviser reviews clients’ accounts or financial plans, and would identify who conducts the review.<sup>184</sup> Advisers that review accounts, but not regularly, would explain what circumstances would trigger an account review.

**Item 13. Payment for Client Referrals.** The brochure would describe any payment, whether in cash or otherwise, that the adviser or a related person makes for client referrals. The brochure would also disclose whether the adviser receives any benefit, including sales awards or prizes, from a non-client for providing advisory services to clients.<sup>185</sup>

**Item 14. Custody.** Advisers that accept custody of client funds or securities would say so in their brochure and would describe any special reports they give to those clients.<sup>186</sup> Advisers that

<sup>182</sup> Proposed Item 11.A.3.b. of Part 2A.

<sup>183</sup> As discussed *supra* at note 180, commission recapture involves directing brokerage in exchange for cash rebates made to the client.

<sup>184</sup> Proposed Item 12 of Part 2A incorporates requirements currently in Item 11 of Part II.

<sup>185</sup> Proposed Item 13 of Part 2A incorporates requirements in current Item 13 of Part II. Proposed Item 13 would require advisers to disclose economic benefits to the firm; as discussed below, proposed Item 5 of Part 2B would require advisers to disclose economic benefits to a supervised person. *See infra* Section I.I.D.2.b. of this Release.

<sup>186</sup> Item 14 would retain the same definition of “custody” as now in Form ADV. *See* Glossary of Terms to proposed Form ADV and Instruction 5 to current Form ADV. Advisers have custody if, for example, they hold client funds or securities or they have the ability to appropriate client assets such as having signatory power over a client’s checking account. Advisers also may be deemed to have custody of client assets because a related person of the adviser has custody of those assets. Our staff has provided guidance on the factors to be considered in determining whether an adviser in this circumstance is deemed to have custody. *See* Crocker Investment Management Corp., SEC No-Action Letter (Apr. 14, 1978) (setting out a five-factor test). *See also* Investment Advisers Act Release No. 1000 (Dec. 3, 1985) (50 FR 49835 (Dec. 5, 1985)) at question I.I.E.5. (whether an adviser is deemed to have custody because it is affiliated with the custodian is a factual matter based on the actual relationship between the adviser and affiliate). Part II of Form ADV does not currently require advisers to tell clients whether they accept custody. We,

<sup>174</sup> *See* proposed Item 11.A.1.e. of Part 2A, which is substantively the same as current Item 12.B. of Part II.

<sup>175</sup> Using one client’s brokerage to obtain research or other products that benefit another client’s account is often called “cross-subsidization.”

<sup>176</sup> “Paying up” refers to a manager causing a client account to pay more than the lowest available commission rate. Section 28(e) of the Securities Exchange Act of 1934 provides a safe harbor for managers who pay up to obtain research from brokers. Under section 28(e), someone who exercises investment discretion over a client account has not acted unlawfully or breached a fiduciary duty *solely* by causing the account to pay more than the lowest commission rate available, so long as that person determines in good faith that the commission amount is reasonable in relation to the value of the brokerage and research services provided. The 1986 Soft Dollar Release clarified the Commission’s interpretation of section 28(e). Section 28(e), however, does not speak to an adviser’s disclosure obligations—advisers must disclose their receipt of soft dollar benefits to clients whether the benefits fall inside or outside of the safe harbor. *See* 1986 Soft Dollar Release, *supra* note 172.

<sup>177</sup> Proposed Item 11.A.2. of Part 2A. *See* Fleet Investment Advisers, Inc., Investment Advisers Act Release No. 1821 (Sept. 9, 1999) (adviser failed to disclose to clients that it directed brokerage commissions in exchange for client referrals).

<sup>178</sup> Broker-dealers may, for example, offer better prices, including lower commission costs, and/or better execution for larger orders. Generally, our staff has not recommended enforcement action against advisers that aggregate trade orders on behalf of clients, so long as the adviser allocates the trades in a way that treats all clients fairly. *E.g.*, Pretzel & Stouffer, SEC No-Action Letter (Dec. 1, 1995); SMC Capital Inc., SEC No-Action Letter (Sept. 5, 1995). However, advisers violate the Advisers Act’s anti-fraud provisions if they fail to

require custody of client assets would also explain that most advisers do not impose this requirement.<sup>187</sup> The brochure would also disclose that clients face greater risk than if an independent custodian held their assets.<sup>188</sup>

*Item 15. Investment Discretion.* Advisers with discretionary authority over client accounts would be required to disclose that fact in their brochure,<sup>189</sup> and any limitations clients may (or customarily do) place on this authority.<sup>190</sup>

*Item 16. Proxy Voting Policies.* Item 16 would require advisers to disclose their proxy voting practices. This would be a new disclosure requirement, which we propose to add so that clients will be fully informed about who is responsible for voting their proxies and how their interests in proxy voting decisions are protected.

We propose to require advisers to state whether they vote proxies for clients.<sup>191</sup> Advisers that vote client proxies would disclose their voting policies, practices, and procedures.<sup>192</sup>

however, receive this information under current Item 13 of Part I.

<sup>187</sup> An adviser that "requires" clients to give it custody solely because it acts as general partner for a limited partnership, serves as trustee for client accounts, or deducts advisory fees directly from client accounts would not be required to provide this disclosure.

<sup>188</sup> An adviser would not be required to make this risk disclosure if it is a bank, an insurance company, or a broker-dealer that is excepted from rule 206(4)-2 (17 CFR 275.206(4)-2). Rule 206(4)-2 sets out requirements with regard to custody of advisory client assets and securities, and is intended to ensure that client funds and securities are maintained so that they are insulated from and not jeopardized by unlawful activities or financial reverses of the adviser. See Investment Advisers Act Release No. 122 (Nov. 3, 1961) (26 FR 10607 (Nov. 10, 1961)) (proposing rule 206(4)-2). As discussed *infra* at the text accompanying notes 196 to 197 (and discussing Item 18 of proposed Part 2A), banks, insurers, and registered broker-dealers have capital and regulatory requirements that provide protections against the same types of losses that rule 206(4)-2 was designed to prevent.

<sup>189</sup> Currently, Items 12.A. and 12.B. of Part II require information about the adviser's investment discretion and any limitations on it. We propose to continue requiring this information but to clarify, through our proposed definitions in Form ADV, that an adviser has "discretionary authority" if it is authorized to make purchase and sale decisions for client accounts. This definition of discretionary authority is derived from section 3(a)(35) of the Exchange Act (15 U.S.C. 78b(a)(35)). An adviser also has discretionary authority if it is authorized to select other advisers for the client.

<sup>190</sup> For example, clients may not understand that they may ask the adviser not to invest in securities of particular issuers.

<sup>191</sup> Without appropriate disclosure, some clients may incorrectly assume their adviser is voting their proxies.

<sup>192</sup> In some cases, advisers have conflicts of interest in voting proxies. For example, the adviser

These advisers would also explain whether a client can direct the vote in a proxy solicitation, and whether clients can find out how the adviser voted their securities on a given issue.<sup>193</sup> Advisers that do not vote client proxies would explain how clients will receive proxies (for example, directly from a transfer agent or custodian or through the adviser), and whether the client can discuss particular proxy solicitations with the adviser.

*Item 17. Investment Performance.* Advisers that advertise or report their investment performance would be required to describe any standards they use to calculate (or present) performance. "Standards" may include industry standards, but would also include any proprietary standards used solely by the adviser.<sup>194</sup> The brochure would also discuss whether a third party reviews the adviser's performance information for accuracy or for compliance with presentation standards.<sup>195</sup>

*Item 18. Financial Information.* We are proposing to require the brochure to include certain financial information about the adviser when material to clients. An adviser that has custody of client assets or requires prepayment of fees exposes clients to the risk that the firm may become insolvent and unable to return the assets or refund unearned

may manage money for a public issuer and may recommend that its other clients invest in the issuer's securities. The public issuer client may want the adviser to vote proxies in a manner that conflicts with the best interests of the adviser's other clients. Or, an adviser's affiliates may have a substantial business relationship with an issuer in which advisory clients invest, and those affiliates may pressure the adviser to vote in favor of the issuer's management. Many advisers already have policies designed to protect their clients' interest in these circumstances. Proposed Item 16 would require the brochure to disclose those policies.

<sup>193</sup> We understand that advisers to ERISA plans may be required to maintain voting records for individual proxy solicitations on the client's account, and to provide the plan fiduciary with those records. See Department of Labor Interpretive Bulletin 92-4 (July 21, 1994).

<sup>194</sup> Organizations such as the Association for Investment Management and Research (AIMR) have established guidelines for advisers to use in presenting performance information. Some advisers may be able to claim compliance with the AIMR Performance Presentation Standards™ (AIMR-PPS). AIMR-PPS specify minimum calculation requirements, although the standards themselves are primarily performance presentation standards rather than performance measurement standards. AIMR Performance Presentation Standards Handbook 1 (2nd ed., 1997).

<sup>195</sup> Proposed Item 17 incorporates requirements currently in Item 7(h) of Schedule H; under Schedule H, wrap fee sponsors must provide similar disclosure about review of portfolio managers' performance information and standards used to calculate that information.

fees. We propose to continue requiring advisers to give clients an audited balance sheet showing the adviser's assets and liabilities at the end of its most recent fiscal year.<sup>196</sup> We propose to exclude from the balance sheet requirement advisers that have custody, but are banks, insurance companies, or broker-dealers registered with us.<sup>197</sup> These firms have capital and regulatory requirements that provide protections against these types of losses.

We are also proposing to require advisers with discretionary authority over client assets to disclose, in their brochures, any financial condition reasonably likely to impair the adviser's ability to meet contractual commitments to clients. These clients are exposed to the risk that their assets may not be properly managed for a period of time if the adviser becomes insolvent and ceases to do business. This disclosure is currently required by rule 206(4)-4, which, as discussed above, we propose to rescind.

Finally, we would require an adviser that has been the subject of a bankruptcy petition during the past ten years to disclose that fact to clients. Clients would likely find this information material to their decision whether to hire the adviser.<sup>198</sup> We request comment on other disclosures

<sup>196</sup> Currently Item 14 of Part II (through Schedule C) requires an audited balance sheet if the adviser has custody of client funds or securities, or requires prepayment of more than \$500 in fees per client and six or more months in advance. We would increase the threshold amount from \$500 to \$1,200 to reflect the effects of inflation since we adopted Uniform Form ADV in 1985. We also propose to require this disclosure from advisers that *solicit* clients to prepay fees, which would include providing an economic incentive to prepay fees. Our staff has previously provided guidance consistent with this proposed requirement. See Sunbelt Farm Investment Report, SEC No-Action Letter (Mar. 18, 1985); see also Seger-Elvekrog, Inc., SEC No-Action Letter (Oct. 13, 1998) (adviser that allowed clients to prepay fees, at clients' initiative and contrary to adviser's usual billing practices, was not required to provide an audited balance sheet).

<sup>197</sup> Advisers also may be deemed to have custody of client assets when their affiliates have custody of those assets. See discussion of proposed Item 14, *supra* at notes 186 to 188 and accompanying text. We have excluded an adviser from the balance sheet requirement if the adviser is deemed to have custody but the affiliate having custody of client assets is itself a bank, insurance company or registered broker-dealer.

<sup>198</sup> Part II does not currently require advisers to disclose this information to clients. Current Item 11.K. of Part I requests similar information, but is not limited to bankruptcies occurring within ten years.

concerning bankruptcies. Should Item 18 require disclosure if the subject of a bankruptcy petition was a predecessor adviser? A management person?<sup>199</sup> Another firm under common control with the adviser?

*Item 19. Index.* The brochure filed with us would be required to include an index of the items required by Part 2A.<sup>200</sup> This index is intended to facilitate review by our staff for compliance with the requirements of Part 2A; the adviser would not need to provide it to clients.

*Part 2A Appendix 1: The Wrap Fee Program Brochure.* Advisers that sponsor wrap fee programs<sup>201</sup> would be required to prepare a separate, specialized firm brochure referred to as a “wrap fee program brochure” or “wrap brochure,” and would be required to give the wrap brochure to clients of the wrap fee program, in lieu of the sponsor’s standard advisory firm brochure.<sup>202</sup> The ten items in Part 2A Appendix 1 contain the proposed requirements for a wrap fee program brochure, which are substantially similar to those currently in Schedule H, with changes to incorporate many of the proposed revised requirements for other firm brochures.

#### b. Part 2B: The Brochure Supplement

As discussed above, we are proposing that adviser brochures be accompanied by brochure supplements providing information about the adviser’s advisory personnel. We believe that clients want

<sup>199</sup> Brochure supplements would be required to disclose whether a supervised person has been the subject of a bankruptcy petition. See proposed Item 7 of Part 2B. A client, however, would not necessarily receive a supplement for all management persons.

<sup>200</sup> This requirement is similar to the index Schedule H now requires.

<sup>201</sup> Under a wrap fee program, advisory clients pay a specified fee for investment advisory services and the execution of transactions. The advisory services may include portfolio management and/or advice concerning selection of other advisers, and the fee is not based directly upon transactions in the client’s account.

<sup>202</sup> We adopted the requirement for a separate brochure for wrap fee clients in 1994, and we continue to believe that wrap fee program clients should receive a separate brochure containing only information relevant to wrap fee program clients. See Disclosure by Investment Advisers Regarding Wrap Fee Programs, Investment Advisers Act Release No. 1411 (Apr. 19, 1994) (59 FR 27659 (May 27, 1994)) (adopting rules to require wrap fee sponsors to give wrap fee clients separate brochures); Disclosure by Investment Advisers Regarding Wrap Fee Programs, Investment Advisers Act Release No. 1401 (Jan. 13, 1994) (59 FR 3033 (Jan. 20, 1994)) (proposing wrap fee brochure rules). Advisers whose entire advisory business is sponsoring wrap fee programs would prepare a wrap brochure but would not be required to prepare a standard advisory firm brochure. Wrap fee sponsors would, like other advisers, be required to provide brochure supplements to their wrap fee clients.

and need information about the individuals on whom they will rely for investment advice.

The current brochure requirements of Form ADV consist of a series of compromises on disclosure about advisory personnel that we believe can be improved on. We currently require brochures to include background information only on firm executives and members of the firm’s “investment committee,”<sup>203</sup> which does not include most advisory personnel of the growing number of larger advisory firms registered with us.<sup>204</sup> It is unclear to us whether the information provided about executives and investment committee members is useful to most clients of these firms. Moreover, brochures contain no information about the disciplinary backgrounds of advisory personnel—information that may be of key importance to a client who may be entrusting his investments to the care of the individual.<sup>205</sup> When we considered Uniform Form ADV in 1985, we recognized these shortcomings of the brochure, and proposed expanding the required background information on advisory personnel.<sup>206</sup> We decided not to do so after commenters objected that many advisers’ brochures would become lengthy and less readable.<sup>207</sup>

Today we are proposing a different approach to resolving the same concerns that led to the 1985 proposals. We propose to require advisers to prepare separate supplements for advisory personnel—called “supervised persons.”<sup>208</sup> Each supplement would contain background information about

<sup>203</sup> Item 6 of Part II of Form ADV. If the firm has no investment committee, we require that background information be provided for each individual who determines general investment advice given to clients. If there are more than five of these persons, then information need only be provided for their supervisors. *Id.*

<sup>204</sup> In the case of a small firm consisting of an owner and a few employees, the current disclosure requirements may require disclosure of all the firm’s advisory personnel. After the enactment of NSMIA in 1996, most of the smaller firms withdrew their registrations with us and are now regulated by state securities authorities.

<sup>205</sup> Brochures currently are not required to contain information about the adviser’s disciplinary history either. See discussion *supra*, at section II.D.2.b. of this Release.

<sup>206</sup> Investment Advisers Act Release No. 967, *supra* note 146.

<sup>207</sup> Investment Advisers Act Release No. 991, *supra* note 42.

<sup>208</sup> Under our proposed rule 204–3 and proposed Glossary of Terms to Form ADV, a “supervised person” means any of the adviser’s officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on the adviser’s behalf. This is substantially similar to the definition in section 202(a)(25) of the Advisers Act (15 U.S.C. 80b-2(a)(25)).

an individual or group.<sup>209</sup> Advisers would be required to give a client a supplement only for a supervised person who will provide advisory services to that client. Thus, a client would receive information about supervised persons who are specifically relevant to that client. The supplements should only be a page or so in length, and each supervised person could provide clients with his own supplement along with the firm’s brochure as he would a resume.<sup>210</sup> Supplements would not have to be filed with us, but would be kept by advisers for review by our examiners.<sup>211</sup> We are not proposing to require that advisers file supplements with us, in part because of the additional cost of building the IARD to accept supplements. The additional cost would have to be reflected in higher filing fees. The most important information in the supplements—the supervised person’s disciplinary history—would be reported on the DRP Schedules in Part 1 of Form ADV and available through the IARD. Moreover, prospective clients could obtain supplements from advisers. On balance, we concluded that the additional costs of requiring advisers to file supplements with us exceeded the benefits. We request comment on this conclusion.

Under our proposed amendments to rule 204–3, an adviser must deliver a supplement for a supervised person to a client before or at the same time the supervised person begins to provide advisory services for the client.<sup>212</sup> The proposed rule would require delivery to a client only if it is expected that the supervised person will either (i)

<sup>209</sup> A smaller advisory firm that chose to include information about all advisory personnel in its firm brochure would not need any supplements. See Instruction 5 to Part 2B. Advisers would be free to determine whether they wish to provide the background information on advisory personnel in supplements or as part of its firm brochure.

<sup>210</sup> Pursuant to our authority under section 204 of the Advisers Act, our proposed rule 204–3 would require the adviser to deliver the supplements as well as the firm’s brochure. We recognize that in most cases, however, the adviser will have supervised persons deliver their supplements to clients and may have a supervised person deliver the brochure. In proposed rule 204–3(b)(1) and proposed Instruction 2 to Part 2B, we make it clear that the firm can delegate this responsibility to a supervised person.

<sup>211</sup> Our recordkeeping rules would require the adviser to preserve a copy of each supplement, including any revised supplements or stickers, and to make them available to SEC staff. See proposed rule 204–2(a)(14), General Instruction 5 to Part 2, and Instruction 7 to Part 2B.

<sup>212</sup> Supplements will likely be given to the client along with the firm brochure, at the start of the advisory relationship. If a supervised person will not provide advisory services until later, however, the supplement for that individual can be delivered at that time.

regularly communicate investment advice to that client,<sup>213</sup> or (ii) formulate investment advice for that client, including exercising investment discretion over that client's assets.<sup>214</sup> Advisers would not have to deliver a supplement for a supervised person who has no client contact and formulates advice only as part of a team. This provision is designed to require information about persons who have substantial responsibility for the investment advice clients receive. The requirements for updating a brochure supplement and delivering the corrected information to clients would be essentially the same as for the firm's brochure.<sup>215</sup> We request comment on the scope of the delivery requirement. Are there better ways to provide clients with information about a firm's advisory personnel?

The contents of brochure supplements would be specified by Part 2B, which would consist of seven items. Where Part 2A would require disclosure about the advisory firm, Part 2B would require disclosure about certain supervised persons of the advisory firm. We request comment on the scope of proposed Part 2B. Will clients find this to be useful information? Is there other information about supervised persons that clients need and that we should require in brochure supplements?

*Item 1. Cover Page.* The supplement's cover page would include information identifying the supervised person and the advisory firm.

*Item 2. Educational Background and Business Experience.* The supplement would be required to describe the supervised person's formal education and business background for the past five years.<sup>216</sup> Professional designations have also become important to a client's understanding of the supervised person's qualifications in the investment adviser industry. We are therefore proposing that the supplement

identify the supervised person's professional designations or attainments.

*Item 3. Disciplinary Information.* The supplement would be required to disclose the disciplinary history of the supervised person. We are proposing substantially the same disclosure requirements for the supervised person's disciplinary history as we are proposing for the firm's disciplinary history.<sup>217</sup> Item 3 would also require, again because of the importance of professional designations, that the supplement disclose any proceeding revoking or suspending a professional attainment, designation, or license of the supervised person.

In the case of a supplement for a single individual, a client receiving an updated supplement should be able to identify any new disciplinary disclosure easily. We request comment, however, on whether this information might be obscured in supplements prepared for groups of supervised persons. Should a supplement for a group be required to highlight any changes to disciplinary disclosure, or otherwise alert clients to the change? If so, should the alert appear on the cover page of the supplement, or should it accompany the disciplinary disclosure itself?

*Item 4. Other Business Activities.* We would require the supplement to describe any other business activities of the supervised person, particularly other capacities in which the supervised person participates in the financial markets.<sup>218</sup> A relationship between the business of the advisory firm and other business of the supervised person may create a material conflict of interest with the adviser's clients. If this occurs, the supplement would be required to describe the nature of the conflict and any procedures the adviser uses to address the conflict.

The supplement would also disclose whether the supervised person receives transaction-based compensation,

including bonuses and non-cash compensation. As discussed earlier,<sup>219</sup> this practice creates an incentive for the individual to base investment recommendations on his own compensation rather than on clients' best interests. If the supervised person receives transaction-based compensation, we would require the supplement to explain this incentive.

*Item 5. Additional Compensation.* A supplement would be required to describe arrangements in which someone other than a client gives the supervised person an economic benefit (such as a sales award or other prize) for providing advisory services.<sup>220</sup>

*Item 6. Investment Advice and Supervision.* Not all supervised persons formulate the investment advice they give to their clients, so we propose to require the supplement to discuss who formulates that advice. If the supervised person does formulate advice for clients, the supplement would also explain how the firm monitors the advice provided.

We would also require the supplement to provide the client with the name, title and telephone number of the person responsible for supervising the advisory activities of the supervised person. This information would permit the client to contact other advisory personnel when necessary to address any problems in the advisory relationship.

*Item 7. Financial Information.* The supplement would be required to disclose whether the supervised person was the subject of a bankruptcy petition during the past ten years.

### 3. Execution Pages

Form ADV would be electronically "signed" by an authorized person of the adviser before the form could be submitted to the IARD. The authorized person would sign the form by typing his or her name and submitting the filing on behalf of the adviser.<sup>221</sup> Under the proposed amendments, an authorized person would sign one of three different execution pages, depending on whether the adviser is resident in the United States or another country and whether it is registered or registering with the Commission or the states.<sup>222</sup> As under current Form ADV,

<sup>219</sup> See proposed Item 5 of Part 2A.

<sup>220</sup> The proposed item would specify that regular salary need not be disclosed. Bonuses based (in part or whole) on sales, client referrals or new accounts would trigger required disclosure, but other bonuses would not.

<sup>221</sup> See *supra* note 47 (noting that the electronic signature required by the IARD is not a digital signature).

<sup>222</sup> The IARD will select the proper execution page for an adviser depending upon identifying

<sup>213</sup> We have included the term "regularly" in the proposed rule, to prevent casual communications from causing a violation of the delivery requirement. We would intend the term to be interpreted in the context of the overall advisory relationship with the client. For example, a supervised person who provides a financial plan to a client would be regularly communicating advice to the client even if they meet only once or twice.

<sup>214</sup> Proposed rule 204-3(b)(1)(B). If a supervised person neither communicates investment advice regularly to any client nor formulates investment advice for any client, no supplement would be required for that supervised person. Instruction 1 to Part 2B of Form ADV.

<sup>215</sup> See *supra* text accompanying notes 112-123.

<sup>216</sup> Currently, Item 6 of Part II of Form ADV requires this information about the adviser's principal executive officers and about individuals who determine general investment advice on behalf of the adviser.

<sup>217</sup> See proposed Item 8 of Part 2A. As discussed earlier, *supra* note 153, proposed rule 204-2(a)(14)(ii) would require an adviser to keep a file memorandum if the adviser determines not to disclose an event of the type described in Item 3 of Part 2B.

<sup>218</sup> Item 4 of Part 2B would be similar to proposed Item 9 of Part 2A. The supplement would, however, also disclose information regarding any other business activities or occupation that the supervised person engages in for pay. Clients may have different expectations of an individual whose sole business is providing investment advice than of an individual for whom advisory services are a sideline. We are proposing this requirement so that clients can evaluate the importance of the advisory business to the supervised person. If another line of business provides the supervised person's primary source of income, the supplement would say so explicitly.

by signing the form, the authorized person would affirm that the information in the form is true and complete, and would appoint certain officials as agents for service of process in states where the adviser conducts business.<sup>223</sup> These appointments allow state securities authorities, private parties, and us to bring actions against the adviser by delivering necessary papers to any or all of the appointed agents.<sup>224</sup>

Non-resident advisers,<sup>225</sup> in addition to executing Form ADV, currently must submit a separate form appointing the Commission as their agent for service of process.<sup>226</sup> Non-resident advisers also submit a separate undertaking to provide required books and records to our staff.<sup>227</sup> We propose to incorporate both of these requirements into a Form ADV execution page that would be used by non-resident advisers, and thereby eliminate the additional filings non-resident advisers currently make.<sup>228</sup> In

information the adviser will have provided on the form. An adviser that chooses to register both with the Commission and one or more states would be required to complete two execution pages, one for SEC registration and one for state registration.

<sup>223</sup> Currently, an adviser appoints an official of each state in which the adviser is registered (or has a registration pending, or, within the past ten years, either withdrew before registration or was previously registered). See Item 7 and the Execution Section of Part I of Form ADV. As proposed, an adviser would appoint an official in the state where it maintains its principal office and place of business, and each state where it submits a notice filing (if SEC-registered) or is registered or registering (if state-registered).

<sup>224</sup> Each agent currently can receive service of process for "any action or proceeding." As proposed, the agent also could receive service for administrative and arbitration proceedings. By including arbitration proceedings in the form, we are not addressing whether advisers may require clients to resolve disputes under the Advisers Act through arbitration or other alternate dispute resolution forum. Cf. *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989) (upholding the arbitrability of disputes arising under the Securities Act); *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987) (upholding the arbitrability of disputes arising under the Exchange Act).

<sup>225</sup> A non-resident adviser has its principal office and place of business in a location outside of the United States. Rule 0-2(d)(3) (17 CFR 0-2(d)(3)). Non-resident advisers generally register with the Commission and not the state securities authorities, because their principal office and place of business is not in a state that regulates advisers. See section 203A(a) and proposed Item 2.A(3) of Part 1A.

<sup>226</sup> Rule 0-2. Each non-resident adviser currently is required to appoint an agent for service of process on Form 4-R (for a sole proprietor) (17 CFR 279.4), Form 5-R (for a corporation) (17 CFR 279.5), or Form 6-R (for a partnership) (17 CFR 279.6).

<sup>227</sup> Rule 204-2(j)(3) (17 CFR 275.204-2(j)(3)) requires a non-resident adviser to provide this undertaking unless it agrees to keep a duplicate, "shadow" set of books and records in the United States.

<sup>228</sup> We are proposing to eliminate Forms 4-R, 5-R and 6-R, and to amend the corresponding rule to delete unnecessary text. See proposed amendment to rule 0-2.

addition, non-resident general partners or managing agents of all SEC-registered advisers must appoint the Commission<sup>229</sup> as their agent for service of process on Form 7-R.<sup>230</sup> We propose to revise Form 7-R and rename it Form ADV-NR. The form would be filed with us in paper format.<sup>231</sup>

A separate execution page for state-registered advisers has been prepared by NASAA. It is similar to the one for SEC-registered advisers, but includes affirmations that would be required for state registration.<sup>232</sup>

#### E. Proposed Revisions to Form ADV-W

Form ADV-W was designed for an adviser to use to withdraw its registration after ceasing operations.<sup>233</sup> Today, SEC-registered advisers also use the form to switch to state registration,<sup>234</sup> and state-registered advisers use it to withdraw their registration with one or more states while remaining registered with others. We propose to amend Form ADV-W to reflect this expanded use.<sup>235</sup> As proposed, an adviser could file Form ADV-W to withdraw from some (partial withdrawal)<sup>236</sup> or all (full withdrawal) jurisdictions in which it is registered. An adviser ceasing operations would complete the entire form to file for full withdrawal.<sup>237</sup> An adviser filing for

<sup>229</sup> See proposed rule 0-2(a). This appointment does not change based on whether the adviser is located in the United States or in another country. A general partner or managing agent of an adviser is "non-resident" if he or she resides in a place not subject to the jurisdiction of the United States. Rule 0-2(d)(4) (17 CFR 0-2(d)(4)).

<sup>230</sup> This appointment is intended to make the Advisers Act as enforceable against a non-resident person as it is against a person resident in the United States. See Consent to Service of Process to Be Furnished by Non-Resident Investment Advisers and by Non-Resident Investment General Partners or Managing Agents of Investment Advisers, Investment Advisers Act Release No. 74 (June 30, 1954) (19 FR 4300 (July 14, 1954)).

<sup>231</sup> We propose to require partners and agents to file Form ADV-NR with us on paper due to the limited number of filings we expect. See discussion of forms that will be filed on paper, *supra* note 38. Non-resident general partners and agents would appoint the same agents (the Commission and various state officials) as a non-resident adviser.

<sup>232</sup> The state-registered adviser execution page is included in Appendix A of this Release. Completing this execution page would be a state, rather than an SEC, requirement, and therefore we are not requesting comment on it. We will, however, pass your comments on to NASAA.

<sup>233</sup> See Investment Advisers Act Release No. 213, *supra* note 52.

<sup>234</sup> See discussion on "switching" to state registration, *supra* notes 53 to 56 and accompanying text.

<sup>235</sup> Form ADV-W is attached to this Release as Appendix B of this Release.

<sup>236</sup> A state-registered adviser withdrawing from registration with some states, for example, would file a partial withdrawal, as would an adviser switching to SEC or to state registration.

<sup>237</sup> We would require advisers filing for withdrawal to affirm the accuracy and

partial withdrawal would omit certain items, such as the location of its books and records, that we do not need from an adviser continuing in business as a state-registered adviser.<sup>238</sup> We request comment on these proposed revisions.

#### F. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and forms, and the proposed rule and form amendments that are the subject of this Release, or to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also are requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

### III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits of its rules and has, in preparing this proposal, carefully balanced the two. As described in more detail below, electronic filing will impose some costs on advisers, particularly the filing fees that advisers will pay to the operator of the system. We believe that electronic filing will yield substantially greater benefits to advisers and investors. The new, improved disclosure requirements will also impose additional costs. These costs are chiefly transitional costs, as advisers prepare new brochures and brochure supplements for the first time. We believe that, over time, these costs will be more than justified by the ongoing benefits to clients who receive better, more useful disclosure.

#### A. Electronic Filing Requirements

The rules we are proposing will require advisers to make filings with us through the Investment Adviser Registration Depository (IARD). Although advisers will pay fees to

completeness of their Form ADV when filing Form ADV-W. Proposed Form ADV-W would, however, no longer require certain information that we no longer need.

<sup>238</sup> An SEC-registered adviser switching to state registration would complete part of Item 1 and electronically sign the form. See page 1 of proposed Form ADV-W at Appendix B of this Release. At the request of NASAA, state-registered advisers filing for partial withdrawal would complete additional items. See *id.* These additional requirements would be a state, rather than an SEC, requirement, and therefore we are not requesting comment on them.

submit certain filings through the system, the IARD will also provide substantial benefits to advisers, including eliminating many of the costs advisers currently incur in filing their Form ADV. Today, advisers must prepare registration materials on paper, copy them, and submit the paper copies to both the SEC and states. Many of these copies must be manually signed and notarized. Correcting a mistake requires the adviser to repeat this entire process. The IARD, in contrast, would permit an adviser to satisfy all of these filing obligations by submitting a single electronic filing prepared using a personal computer in its office.<sup>239</sup> Electronic signatures could be used, and mistakes could be corrected by simply typing over incorrect information and re-sending the electronic submission.<sup>240</sup> Today, advisers must determine the amount of filing fees due each state, prepare checks and mail them so that they are delivered in a timely manner.<sup>241</sup> Errors can result in penalties or cause disruptions in business. The IARD, in contrast, would eliminate these costs by automatically determining the amount of filing fees owed and debiting the adviser's account when those fees are due.<sup>242</sup> These benefits should more than justify the filing fees and other expenses for the typical adviser registered with the Commission.

In drafting the new form, we have sought additional ways to reduce costs. An adviser may save a partially completed form as a "draft" that the adviser can access and complete at a later time. Our proposed on-line glossary would allow an advisers' personnel to refer to explanations of key terms while completing Form ADV, and we would also provide an on-line "help" function, to answer frequently-asked questions and provide guidance on completing the form.<sup>243</sup> When an

<sup>239</sup> See discussion of electronic filing requirements *supra* at Section II.A.1. of this Release.

<sup>240</sup> The IARD will also prevent advisers from making incomplete filings. Submitting an incomplete filing is a common error by new advisers applying for registration, and is one that can substantially delay the registration process and thus the business plans of applicants. See discussion of electronic filing requirements, *supra* Section II.A.1. of this Release.

<sup>241</sup> Postage expenses alone can cost an SEC-registered firm \$750 per year. This estimate assumes an average overnight mail cost of \$10 per mailing in each of 50 states and an average of 1.5 amendments filed per year ( $\$10 \times 50 \times 1.5$ ) = \$750.

<sup>242</sup> The Commission does not charge any filing or other fees. See *supra* note 36 (discussing elimination of investment adviser registration fees charged by the Commission).

<sup>243</sup> See discussion of electronic filing requirements *supra* at Section II.A.1. of this Release.

adviser prepares an amendment to its Form ADV, the IARD will pre-populate most of the items from the adviser's previous filings, reducing the adviser's time (and therefore expense) in completing the amendment. Further, we have designed the IARD so that advisers that also are registered as broker-dealers will complete Schedules to their Form ADV by "linking" to parallel responses in their Form BD already on file. Thus, these firms will recognize additional cost savings by avoiding entering certain data twice.<sup>244</sup>

We have taken into consideration that not all advisers may have access to the Internet. A continuing hardship exemption would be available to certain "small advisers" that are unable to file through the IARD without undue burden and expense (if, for example, the adviser does not have Internet access and is unable to afford a filing service).<sup>245</sup> The continuing hardship exemption is intended to minimize any burden imposed by the electronic filing requirements.

The IARD also has the potential to speed the registration process for investment adviser representatives of SEC-registered advisers. Registration of investment adviser representatives on the IARD will be a matter for state securities authorities; we do not register or license investment adviser representatives. Our experience with the CRD system, however, provides an analogy. Our understanding of how broker-dealer agent filings on the CRD system are processed suggests that electronic filings on the IARD for investment adviser representatives are likely to be more efficient and cost effective than the current system of paper filings.

Electronic filing also will produce substantial benefits for investors. First, and most important, the information on these filings will be available for investors to view, without cost, on a web site.<sup>246</sup> Investors will be able to determine, for example, whether a prospective adviser has reported disciplinary events, what types of fees it charges, and whether the types of advisory services it offers are designed to meet their needs. As a result, investors—potential clients—will be in

<sup>244</sup> Approximately 900 SEC-registered advisers also are registered with us as broker-dealers.

<sup>245</sup> See discussion of proposed hardship exemptions *supra* at Section II.B.4. of this Release.

<sup>246</sup> Investment adviser information is publicly available from us, but until now we have been unable to provide this information to the public without charge. We currently charge \$.24 per page for copies and, upon receipt of the required fee, mail the Form ADV to the requester.

a better position to make informed decisions.

The added "sunlight" the web disclosure will shine on advisers may have additional, secondary benefits. Information from advisers' filings will be available through a web site, and easy availability of information about advisers and advisory affiliates may, for example, discourage advisers from engaging in certain practices or hiring certain persons (such as those with disciplinary history or limited qualifications). Investors' access to information may also facilitate greater competition among advisers, which may in turn lower prices or encourage the development of different fee structures or different kinds of services that may benefit clients. These types of benefits are difficult to isolate or to quantify, but our experience is that they are real and are often the result of better disclosure.

Electronic filing will also give us better access to information about advisers to administer our regulatory programs. We expect this information will permit us to increase both the efficiency and effectiveness of our programs and thus increase investor protection. The IARD will permit us to better monitor advisers' failure to make required filings, identify advisers whose activities suggest a need for closer scrutiny, and manage our regulatory programs. The IARD will generate reports on the industry, its characteristics and trends. These reports will help us anticipate regulatory problems, allocate and reallocate our resources, and more fully evaluate and anticipate the implications of various regulatory actions we may consider taking.

#### B. Proposed Form ADV

We have divided proposed Form ADV into two parts, Part 1 and Part 2. For purposes of assessing costs and benefits, each part is discussed separately below.

##### 1. Part 1

SEC-registered advisers would experience few additional costs in completing revised Part 1. We have re-drafted Part 1A in plain English, improved its organization, and added instructions to clarify some items. Proposed Part 1A would require no additional information that should not be readily available to an adviser. The revised Schedules would make it much simpler, in comparison to current Schedules A, B, and C, to provide information about control persons.<sup>247</sup>

<sup>247</sup> An adviser generally would no longer be required to report an indirect owner unless the

While smaller advisers may find these benefits limited, larger advisers (particularly advisers that are part of a larger, more intricate corporate structure) should see cost savings from the proposed changes to the Schedules. The proposed new Disciplinary Reporting Pages (DRPs) would require substantially more detailed information about disciplinary events than is specified in the current form, but the new DRPs should serve mainly to clarify existing disclosure obligations, which are worded more generally.<sup>248</sup> Moreover, we would only require an adviser to report disciplinary events occurring in the past ten years,<sup>249</sup> and would remove information about the educational and business background of employees.<sup>250</sup> We expect that these changes will justify any additional costs associated with amendments to Part 1A.

## 2. Part 2

An analysis of the costs and benefits of Part 2 is more complex. Most advisers would be required to replace their current Part II with a narrative brochure in plain English, and to re-file this new brochure with us. In addition, the disclosure in the new brochure may be more complete, and in some cases more detailed, than Form ADV currently requires. Thus, drafting the new narrative brochure will likely entail additional expenses.

Most of the cost associated with preparing a brochure would be incurred in the initial preparation, specifically in drafting the narrative brochure. Advisers are already required to provide us and/or their clients with much of the information required in the new brochure,<sup>251</sup> so we do not expect advisers to have substantial expenses in gathering this information. In addition, since most of the costs of redrafting the new brochure will be incurred in the first year, we do not expect proposed

Part 2A to result in any significant cost increase over time. The cost of preparing a narrative firm brochure is likely to vary substantially among advisers, in part because proposed Part 2A would give an adviser considerable flexibility in structuring its disclosure. Drafting a brochure to describe the adviser's business practices and disclose conflicts of interest need not be a long or an expensive process. Some advisory firms, however, may elect to use their brochure to market their services, as well as to make required disclosure. These firms will likely face significantly higher expenses, particularly if they bring in legal, design and marketing professionals. Other firms may choose to prepare multiple brochures, which would also require higher drafting costs.

Under the proposed rules, the brochure would have to be reprinted annually to incorporate all interim amendments. The cost of printing a narrative brochure, however, should not be substantially different from the current cost of printing Part II; the narrative brochure is not required to be professionally printed. Further, we have sought to make interim amendments inexpensive by permitting advisers to use "stickers" to correct a brochure. We also do not anticipate that the costs of distributing the proposed brochures (and stickers) would be significantly higher than the costs of distributing Part II or a brochure under existing delivery requirements. These costs currently vary among advisers, depending on how the adviser delivers the brochure and the number of advisory clients who receive it.<sup>252</sup> Because of this large number of variables—initial drafting costs, number and extent of corrections, mode of distribution, number of clients, and others—quantifying the overall costs to advisers of the proposed narrative brochure is not practicable.

Advisers also would incur some costs to prepare brochure supplements for supervised persons, but the supplements would provide important disclosure to advisory clients about relevant advisory personnel. Many supervised persons are already subject to state regulation as investment adviser representatives, and much of the information needed for the brochure supplement can be obtained from the adviser's current Form ADV and the representative's registration

application.<sup>253</sup> The costs of preparing brochure supplements would also vary widely from one adviser to the next, depending on the number of supervised persons of the adviser, the extent of a supervised person's professional and educational background, and the amount of disciplinary information required to be disclosed. The aggregate cost to the investment adviser industry in preparing the proposed brochure supplements therefore is not readily quantifiable. The proposed amendments would, however, include several options to minimize advisers' costs in preparing and distributing the brochure supplements.<sup>254</sup>

## C. Form ADV-W

Advisers would incur less cost in completing proposed Form ADV-W than in completing the current form. Under proposed amended Form ADV-W, the adviser would complete only those items needed to process the withdrawal.<sup>255</sup> Form ADV-W would also become effective immediately, rather than after a sixty-day "waiting period," thereby smoothing the transition period for advisers switching to state registration.

## D. Request for Comment

We request comment on the effects of the proposed rule and form amendments on individual investment advisers and on the advisory profession as a whole, and request data to quantify the costs and value of the benefits associated with these proposed amendments. Specifically, we request comment on the cost savings for advisers (and their representatives) filing through the IARD. We also request data on advisers' current costs of complying with state notice filing and investment adviser representative registration requirements. We also request comment on the costs of completing and re-filing Part 1A of proposed Form ADV, and of preparing and delivering the firm brochure, wrap

indirect owner owned 25% of a direct owner. See discussion of proposed Schedules, *supra* Section II.D.1. of this Release. See *supra* note 102 (describing difficulties for foreign-owned broker-dealers to obtain ownership information).

<sup>248</sup> Moreover, most advisers do not have disciplinary events to report.

<sup>249</sup> See discussion of disciplinary disclosure requirements *supra* at Section II.D.1.a.ii. of this Release. We also are proposing to stop requiring advisers to report unsatisfied judgments or liens; bankruptcies; bond denials, payouts, or revocations; or any "minor" rule violations. See discussion of "minor" rule violations, *supra* Section II.D.1.a.ii. of this Release, and note 95 and accompanying text (discussing "minor" rule violations).

<sup>250</sup> For many supervised persons providing advisory services, this information would appear in the proposed brochure supplements. See discussion of proposed brochure supplements, *supra* at Section II.D.2.b. of this Release.

<sup>251</sup> See discussion of the firm brochure, *supra* Section II.D.2.a. of this Release.

<sup>252</sup> For example, if the adviser has arranged to deliver the firm brochure (and written brochure updates) to its advisory clients by electronic media, it would not incur costs to print and mail the brochure to its clients (or to offer it to them each year). See Investment Advisers Act Release No. 1562, *supra* note 123.

<sup>253</sup> Investment adviser representatives typically apply for state registration by filing Form U-4. See *supra* note 27.

<sup>254</sup> A small adviser, for example, could choose to include all required information for each supervised person in its firm brochure and thus not prepare any brochure supplements. Firms that have one or more groups of supervised persons providing advisory services could consolidate information about all members of a particular group into one brochure supplement. See discussion of Part 2B, *supra* Section II.D.2.b. of this Release. Advisers whose services did not trigger a delivery requirement (for example, advising registered investment companies or providing only impersonal investment advice) would not be required to prepare brochure supplements.

<sup>255</sup> See discussion of Form ADV-W, *supra* Section II.E. of this Release.

brochure, and brochure supplement(s). Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

#### IV. Paperwork Reduction Act

The proposed rule and form amendments contain several "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,<sup>256</sup> and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information are "Form ADV," "Schedule I to Form ADV," "Rule 206(4)-4," "Form ADV-W and Rule 203-2," "Rule 0-2 and Forms 4-R through 7-R," "Rule 204-2," and "Rule 204-3," all under the Advisers Act. We are proposing to amend Form ADV, Schedule I to Form ADV, Rule 206(4)-4, Form ADV-W and Rule 203-2, Rule 0-2 and Forms 4-R through 7-R, Rule 204-2, and Rule 204-3. These rules and forms contain currently approved collection of information numbers under OMB control numbers 3235-0049, 3235-0490, 3235-0345, 3235-0313, 3235-0240, 3235-0278, and 3235-0047, respectively. We also are proposing new rule 203-3 and new Form ADV-H, which both would contain a collection of information requirements. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB number is displayed.

#### Form ADV

Form ADV contains collection of information requirements. Rule 203-1 requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204-1 requires each registered adviser to file amendments to Form ADV at least annually, and also would require advisers to begin submitting electronic filings through the IARD. This collection of information is found at 17 CFR 275.203-1, 275.204-1, and 279.1 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection would be all advisers registered with us or applying for registration after advisers begin making filings through the IARD.

An increase in the number of respondents to the collection of information for Form ADV will increase the currently approved burden of the collection of information. The current

burden for new registrants is approximately 6,848 hours,<sup>257</sup> and assumes approximately 760 new applicants per year and a weighted average of 9.01 hours per adviser. The current burden also applies to current registrants amending their Form ADV, is approximately 1.07 hours per amendment, and is based on approximately 7,300 advisers registered with us and filing 11,810 amendments annually. The current total burden for all advisers filing Form ADV is 19,448 hours.

Based, however, on the Commission's recent experience in processing investment adviser registration applications, the Commission now estimates that approximately 1,000 advisers each year are new applicants for SEC registration, increasing the total burden by 2,162 hours.<sup>258</sup> Also, approximately 8,100 advisers are registered with us, increasing the current burden of filing amendments to Form ADV by 1,541 hours.<sup>259</sup> The total increase in the collection of information for Form ADV resulting from an increase in the number of respondents is 3,703 hours.<sup>260</sup>

The collection of information for Form ADV would incorporate the burdens of rule 206(4)-4 and Schedule I into Form ADV. The collections of information for rule 206(4)-4 and Schedule I to Form ADV are discussed below.

The proposed amendments to Form ADV at first would increase the paperwork burden, as most advisers would have to redraft and disseminate a narrative brochure and brochure supplements. The paperwork burdens of preparing a narrative firm brochure is likely to vary substantially among advisers, in part because proposed Part 2A would give an adviser considerable flexibility in structuring its disclosure, and also because the amount of disclosure required would vary among advisers. Most of the new paperwork burden would be incurred in this initial preparation, specifically in drafting the narrative text. Once the adviser has redrafted its narrative brochure, proposed Parts 2A and 2B are not

<sup>257</sup> This current burden does not include the burden imposed by rule 206(4)-4 of 6,755 burden hours per year. Under the proposed amendments, the collection of information under this rule would be incorporated into Form ADV's collection of information requirements, and is reflected in the estimates below.

<sup>258</sup> (240 more advisers applying for registration  $\times$  9.01 hours) = 2,162.4 hours.

<sup>259</sup> ((800 more currently-registered advisers  $\times$  1.5 amendments) + (240 new applicants  $\times$  1 amendment))  $\times$  1.07 hours = (1,200 + 240)  $\times$  1.07 = 1,440  $\times$  1.07 = 1,540.8.

<sup>260</sup> 1,541 hours + 2,162 hours = 3,703 hours.

expected to result in any significant burden increase over time (except for changes to the brochure that are necessitated by changes in the adviser's business).<sup>261</sup> Part 1A is expected to impose a minimal paperwork burden, as none of the new items requests information that should not be readily available to the adviser. The efficiencies of filing through the IARD, over time, are expected to reduce the initial burdens associated with completing the revised Form ADV.

The burdens associated with using the revised form would be amortized over the estimated period that advisers would use their revised brochure. We adopted significant changes to Form ADV in 1985,<sup>262</sup> and required advisers to re-file their amended Form ADV, and to prepare and begin using a new brochure. At that time, advisers incurred paperwork burdens in the "start-up" costs of the revised Form ADV. Once advisers re-filed their Form ADV, advisers' paperwork burdens generally were limited to amending the form as needed. Advisers thus have used current Form ADV (and thus the current brochure) for approximately the past fifteen years (depending on exactly when they re-filed their Form ADV with us). The paperwork burdens of the revised form would be amortized over a similar fifteen-year period.<sup>263</sup>

The additional burdens that would be imposed by the revised form also would be reflected in the revised collection of information. During the first year that an adviser uses new Form ADV, the burden of completing the revised form for the first time would result in a new total collection of information burden of an estimated 22 hours per adviser, including preparation of brochure supplements. This total collection of information would total 22,000 hours for new registrants and 178,200 hours for currently registered advisers that re-file Form ADV through the IARD system, for a total of 200,200 hours.<sup>264</sup>

<sup>261</sup> The burden of amending Form ADV to reflect these changes in the brochure is expected to be similar to the current burden of reflecting these changes in the adviser's Part II of Form ADV.

<sup>262</sup> Since 1985, we have amended sections of Form ADV and added Schedules H and I, but not revised the form in its entirety.

<sup>263</sup> The Commission staff chose a fifteen-year amortization period to reflect the anticipated period of time that advisers would use the revised form. If the Commission adopts significant revisions to Form ADV within the next fifteen years, the actual collection of information burden may be higher than the estimates contained in this analysis and we would revise the Form ADV collection of information burden accordingly.

<sup>264</sup> (8,100 current registrants  $\times$  22) + (1,000 new applicants  $\times$  22) = 178,200 + 22,000 = 200,200 hours. The revised collection of information

Amortizing this total burden imposed by Form ADV over a fifteen-year period would result in an average burden increase of an estimated 13,346.67 hours per year,<sup>265</sup> or 1.47 hours per year for each new applicant and for each adviser currently registered with the Commission that would re-file through the IARD.<sup>266</sup>

In addition, during the first year the IARD is operational, advisers filing through the system would likely amend their Form ADV at least once.<sup>267</sup> Electronic filing, however, should yield significant benefits to advisers filing amendments, and is estimated to reduce the information collection burden of filing an amendment to Form ADV by approximately thirty percent. The collection of information burden for amendments therefore would be 0.75 hours per amendment.<sup>268</sup> Based on the Commission's experience in processing investment adviser amendments, new registrants are estimated to amend their Form ADV once in the first year they are registered, currently-registered newly-formed advisers relying on the exemption found at rule 203A-2(d)<sup>269</sup> are estimated to amend their Form ADV twice per year, currently-registered advisers relying on the multi-state exemption found at rule 203A-2(e)<sup>270</sup> are estimated to amend their Form ADV once per year, and other currently-registered advisers are estimated to amend their Form ADV, on average, 1.5 times per year. Advisers thus file an estimated total of 13,250<sup>271</sup> amendments per year for an estimated total paperwork burden of 9,938 hours per year.<sup>272</sup>

The total collection of information burden for advisers to file and complete

estimate includes the burdens of rule 206(4)-4 and Schedule I to Form ADV in addition to the other collection of information imposed by the proposed form.

<sup>265</sup> 200,200 hours/15 years = 13,346.67. An amortization period of less than fifteen years would yield a higher collection of information burden. For example, if the amortization period was ten years instead of fifteen years, the collection of information burden of re-filing Form ADV would be 20,020 burden hours, or 2.2 hours per adviser. (200,200 hours/10 years = 20,020 hours; 20,020 hours/9,100 advisers = 2.2 hours per adviser.)

<sup>266</sup> 13,346.67/9,100 advisers = 1.47 hours per adviser.

<sup>267</sup> See discussion of the collection of information burdens for amendments to Form ADV *infra* at notes 268 through 272 and accompanying text.

<sup>268</sup>  $1.07 \times .70 = .749$  hours per amendment.

<sup>269</sup> 17 CFR 275.203A-2(d).

<sup>270</sup> 17 CFR 275.203A-2(e).

<sup>271</sup> (890 new registrants  $\times$  1 amendment) + (100 new-applicant newly-formed advisers  $\times$  2 amendments) + (10 new-applicant multi-state advisers  $\times$  1 amendment) + (8,100 other currently-registered advisers  $\times$  1.5 amendments) = 890 + 200 + 10 + 12,150 = 13,250 responses.

<sup>272</sup> 13,250 responses  $\times$  0.75 hours = 9,937.5 hours.

the revised Form ADV therefore would be approximately 23,315 hours per year.<sup>273</sup> The total collection of information burden therefore would be 27,018 hours.<sup>274</sup>

#### *Rule 206(4)-4; Schedule I to Form ADV*

The collection of information requirements for both rule 206(4)-4 and Schedule I to Form ADV would be incorporated in the collection of information requirements for Form ADV, discussed above. The new burden estimate for Form ADV includes these collection of information burdens. Rule 206(4)-4 and Schedule I to Form ADV currently contain collection of information requirements. Rule 206(4)-4 requires advisers to disclose certain disciplinary and financial information to clients. Advisers file Schedule I to Form ADV to claim eligibility for SEC registration (if applying for SEC registration) or to reaffirm their eligibility for SEC registration (if currently registered). These collections of information are found at 17 CFR 275.206(4)-4 and 17 CFR 279.1, are mandatory, and responses are not kept confidential.

We are proposing to rescind rule 206(4)-4 and incorporate its substantive provisions into Part 2A of Form ADV. We also are proposing to incorporate the substantive requirements of Schedule I into Part 1A of Form ADV. The collection of information requirements for rule 206(4)-4 and Schedule I to Form ADV would be eliminated.

#### *Form ADV-W and Rule 203-2*

Form ADV-W and Rule 203-2 contain collection of information requirements. Rule 203-2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV-W. This collection of information is found at 17 CFR 275.203-2 and 17 CFR 279.2 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection would be all advisers registered with the Commission once the transition period to electronic filing is complete.

A decrease in the number of advisers filing to withdraw from SEC registration will decrease the current burden. The currently approved collection of information is one hour. The

<sup>273</sup> 9,938 hours per year attributable to amendments + (1,000 new registrants each year  $\times$  1.47 hours (similarly amortized over a fifteen year period)) + (1.47 hours from the continued amortization from the first year the revised form is used  $\times$  8,100 advisers) = 9,938 hours + 1,470 hours + 11,907 hours = 23,315 hours.

<sup>274</sup> 23,315 hours due to rulemaking + 3,703 hours due to an increase in the number of advisers = 27,018 total burden hours.

Commission in the past received approximately 616 notices of withdrawal on Form ADV-W per year. The weighted average burden hours for completing Form ADV-W is one hour, and the total annual burden hours currently approved by OMB for this form are 616 hours. Based on the Commission's recent experience in processing investment adviser withdrawals, the Commission estimates that approximately 1,300 withdraw from SEC registration each year, decreasing the total burden by 684 hours.<sup>275</sup>

The Commission is proposing to amend rule 203-2 to (a) require advisers to file Form ADV-W through the IARD and (b) make investment adviser withdrawals effective upon filing (rather than after a sixty-day period, as provided in the current rule). The Commission also is proposing to amend Form ADV-W. The proposed form amendments would tailor the required items to the reason for the adviser's withdrawal. An adviser ceasing operations would complete the entire form to withdraw from all jurisdictions in which it is registered (full withdrawal), while an adviser withdrawing from some, but not all, of the jurisdictions in which it is registered would omit certain items that we do not need from an adviser continuing in business as a state-registered adviser.<sup>276</sup>

The proposed amendments to Form ADV-W are expected to reduce the collection of information burden for advisers filing for withdrawal. An adviser filing for partial withdrawal (e.g., the adviser is switching to state registration) would omit certain items, such as the location of its books and records that we do not need from an adviser continuing in business as a state-registered adviser; an adviser filing for full withdrawal (i.e., the adviser is ceasing operations) would complete the entire form. For purposes of this Paperwork Reduction Act analysis, the Commission staff estimates that approximately 50 percent of the advisers filing for withdrawal would file for full withdrawal and the remaining 50 percent would file for partial withdrawal. Compliance with the requirement to complete Form ADV-W would impose a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. The weighted average total time for each applicant to complete revised Form ADV-W therefore is

<sup>275</sup> (684 more advisers  $\times$  1 hour) = 684 hours.

<sup>276</sup> See discussion of Form ADV-W, *supra* Section II.E. of this Release.

estimated to be 0.5 hours (30 minutes), for a total collection of information burden of 650 hours.<sup>277</sup>

#### *Rule 0-2 and Forms 4-R Through 7-R*

Rule 0-2 and Forms 4-R, 5-R, 6-R, and 7-R contain collection of information requirements. Rule 0-2 requires non-resident advisers to furnish us with a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. Rules 279.4, 279.5, 279.6 and 279.7 (17 CFR 279.4, 279.5, 279.6 and 279.7) designate Forms 4-R through 7-R as the irrevocable appointments of agent for service of process, pleadings and other papers to be filed.<sup>278</sup> It is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident advisers and non-resident partners or agents of investment advisers for violations of the federal securities laws. The likely respondents to this information collection would be each non-resident adviser, and each non-resident partner or agent of an SEC-registered adviser.

An increase in the number of non-resident advisers registered with the SEC will increase the current collection of information burden. Forms 4-R through 6-R are required by rule 0-2 to be filed by non-resident advisers, and Form 7-R is required by rule 0-2 to be filed by a non-resident general partner or managing agent of an SEC-registered adviser. The Commission in the past received approximately 300 filings pursuant to rule 0-2. The weighted average burden for Forms 4-R, 5-R, 6-R, and 7-R is one hour per form, and the total annual burden hours currently approved by OMB for these forms is 300 hours. Our records indicate that we receive approximately 475 filings per year from non-resident advisers, partners and agents, increasing the current burden to 475 hours.

The paperwork burdens of Forms 4-R through 6-R are incorporated into the collection of information requirements for Form ADV, discussed above. We are

<sup>277</sup> (650 advisers filing for full withdrawal × .75 hours) + (650 advisers filing for partial withdrawal × .25 hours) = 487.5 + 162.5 = 650 hours.

<sup>278</sup> The nature of the adviser's business structure will determine whether it files Form 4-R, 5-R, or 6-R: a non-resident adviser that is an individual or an unincorporated adviser must file Form 4-R; a non-resident adviser that is a corporation must file Form 5-R; a non-resident adviser that is a partnership must file 6-R. A non-resident general files form 7-R partner or a non-resident managing agent of an SEC-registered adviser.

proposing to amend rule 0-2 and delete Forms 4-R, 5-R, 6-R and 7-R. The substance of Forms 4-R through 6-R would be contained in the execution page to Form ADV. The substance of Form 7-R would be contained in new Form AVD-NR. The Commission staff estimates that approximately 380 respondents would be subject to rule 0-2, with approximately 285 respondents being non-resident advisers that would execute Form ADV to comply with rule 0-2.

The remaining approximately 95 respondents are non-resident general partners or managing agents of SEC-registered investment advisers, and would be required to file Form AVD-NR with the Commission. A non-resident general partner or managing agent would be required to file Form AVD-NR only once. SEC staff estimates that the preparation and filing of Form AVD-NR would require approximately one hour of the non-resident general partner's or managing agent's time. The total estimated burden therefore would be 95 hours.

#### *Rule 204-2*

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Rule 204-2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is mandatory. The Commission staff uses this collection of information in its examination and oversight program, and the information generally is kept confidential.<sup>279</sup> The likely respondents to this collection of information requirement are all advisers registered with the Commission.

A reduction in the number of advisers registered with us will reduce the current burden. Currently, compliance with rule 204-2 requires approximately 195.29 hours each year per Commission-registered adviser, for a total of 1,601,378 burden hours. The current total burden is based on 8,200 potential respondents. Commission records indicate that there currently are approximately 8,100 potential respondents to the collection of information imposed by rule 204-2. As a result of a decrease in the number of advisers registered with the

<sup>279</sup> See section 210(b) of the Advisers Act (15 U.S.C. 80b-10(b)).

Commission, the total burden is decreased by 19,529.<sup>280</sup>

The proposed amendments to rule 204-2 would require registered investment advisers to prepare and preserve a memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of proposed Form ADV (and presumed to be material), if the event involved the adviser or any of its supervised persons and is not disclosed in the adviser's brochure or a brochure supplement. These books and records will be required to be maintained in the manner, and for the period of time, as other books and records are required to be maintained under rule 204-2(a). This collection of information would be found at 17 CFR 275.204-2.

Based on disciplinary items reported on Form ADV, approximately 1,120 advisers currently report disciplinary information. It is anticipated that most of these advisers would include all disciplinary information in their brochure, and approximately ten percent of these advisers, or 110 advisers, would conclude that the materiality presumption is overcome with respect to a legal or disciplinary event, would determine not to disclose that event, and therefore would be required to prepare and preserve a memorandum describing the event. Under the proposed amendments, each respondent would be required to retain the records on an ongoing basis. The proposed amendments to rule 204-2 are estimated to increase the burden by four hours, to 199.29, per Commission-registered adviser that would be required to prepare and preserve these additional records. The annual aggregate burden for all respondents to the recordkeeping requirements under rule 204-2 thus is estimated to be 1,582,293 total hours.<sup>281</sup> The weighted average burden per Commission-registered adviser would be 195.34 hours.<sup>282</sup>

#### *Rule 204-3*

Rule 204-3 contains a collection of information requirement. Rule 204-3, the "brochure rule," currently requires an investment adviser to deliver, or offer, to prospective clients a disclosure statement containing specified information as to the business practices and background of the adviser. The brochure assists the client in

<sup>280</sup> (100 fewer advisers × 195.29 hours) = 19,529 hours.

<sup>281</sup> (1,601,382 current burden hours - 19,529 hours due to a decrease in number of advisers) + 440 hours increase from rulemaking = 1,582,293 total hours.

<sup>282</sup> 1,582,293 total hours / 8,100 advisers = 195.34 hours per adviser.

determining whether to retain, or continue employing, the adviser. Rule 204-3 also currently requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. Under Rule 204-3, the investment adviser must furnish the required information to clients and prospective clients by providing either a copy of Part II of Form ADV, the investment adviser registration form, or a written document containing at least the information required by Part II of Form ADV. This collection of information is found at 17 CFR 204-3 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection are every investment adviser registered with the Commission.

A reduction in the number of respondents will reduce the current collection of information burden. The total annual burden currently approved by OMB for rule 204-3 is approximately 203,350 hours for the approximately 8,300 advisers registered with us when the collection of information was last extended. Our records indicate that approximately 8,100 advisers currently are registered with the Commission. The currently approved collection of information estimates that each adviser requires, on average, approximately 24.5 hours to provide its clients with the required information.<sup>283</sup> As a result of a decrease in the number of advisers registered with the Commission, the total burden is decreased by 4,900 hours.<sup>284</sup>

The proposed amendments to rule 204-3 would require SEC-registered advisers to deliver their brochure and appropriate brochure supplements at the start of the advisory relationship, and to offer to deliver the brochure and brochure supplements annually.<sup>285</sup> The proposed rule amendments also would require that advisers deliver updates to the brochure and brochure supplements to clients whenever information in the brochure becomes materially inaccurate.<sup>286</sup> The updates could take the form of a reprinted brochure or a "sticker" containing the updated information. Currently, our rules require initial delivery of the brochure, but require no further brochure delivery unless the client accepts the adviser's

annual offer.<sup>287</sup> The rule proposal is necessary for an adviser to keep its clients apprised of material changes in its operations, its fees, key advisory personnel, and other information provided in the advisory brochure.

The proposed rule amendments include transition rules that would require each adviser to deliver their revised brochure and any brochure supplements to its current clients. We expect that advisers would send the new brochures and brochure supplements in a "bulk mailing." It is estimated that each adviser has, on average 49 clients and that an adviser requires no more than 0.25 hours to send a package consisting of the adviser's revised brochure and any required brochure supplements to each existing client. The total burden hours for advisers to distribute the revised brochure and any brochure supplements is therefore estimated to be 99,225 hours.<sup>288</sup> The Commission staff estimates that an advisory client engages an adviser for an average of seven years. Amortizing the burden of the initial distribution of the brochure and any brochure supplements over this seven-year period results in an annual collection of information burden of 14,175 hours.

After the initial distribution, an adviser would be required to distribute an update (either a "sticker" or a revised brochure or brochure supplement) approximately 2 times per year.<sup>289</sup> This estimate is based on our experience under rule 204-1 and 206(4)-4. It again is estimated that each adviser has an average of 49 clients, and after the adviser distributes a revised brochure and any brochure supplements to their clients, the adviser would require no more than one half hour each time it is required to provide each client with a brochure, a brochure supplement, or an update. This represents about 49 hours per year for each adviser registered with the Commission.<sup>290</sup> Thus, the annual hour burden to meet the requirements of rule 204-3, as proposed to be amended, would be approximately 396,900 hours,<sup>291</sup> not including the initial

distribution of the revised brochure and any brochure supplements.

The total estimated collection of information burden imposed by rule 204-3, as proposed to be amended, is 411,075 hours per year.<sup>292</sup>

#### Rule 203-3 and Form ADV-H

We are proposing one new rule (proposed rule 203-3) and one new form (proposed Form ADV-H) that would contain a collection of information requirement. Rule 203-3 requires that advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV-H. An adviser requesting a temporary hardship would be required to file Form ADV-H, providing a brief explanation of the nature and extent of the temporary technical difficulties.<sup>293</sup> Form ADV-H would require an adviser requesting a continuing hardship exemption to indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense.<sup>294</sup> A continuing hardship exemption would be available only to an adviser that is a small entity.<sup>295</sup>

Commission records indicate that approximately 1,500 advisers are small entities and therefore 1,500 potential respondents that could apply for a continuing hardship exemption, and approximately 8,100 potential respondents that could apply for a temporary hardship exemption.<sup>296</sup> Based on our experience with hardship filings made by investment companies through our EDGAR system, approximately 50 advisers would request a temporary hardship exemption and approximately 20 would apply for a continuing hardship exemption each year. Proposed Form ADV-H and rule 203-3 are estimated to create a collection of information burden of approximately 60 minutes per respondent, for a total of 70 hours.<sup>297</sup>

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i)

<sup>292</sup> 14,175 hours + 396,900 hours = 411,075 hours.

<sup>293</sup> Similarly, issuers that submit electronic filings on EDGAR apply for a temporary hardship exemption on Form TH. 17 CFR 232.201. Form ADV-H is based on Form TH, which is filed by issuers relying on the temporary hardship exemption.

<sup>294</sup> See proposed Form ADV-H. The adviser applying for a continuing hardship exemption also would be required to indicate the reasons that the necessary hardware and software are unavailable, and propose a time period for which the exemption would be in effect.

<sup>295</sup> See supra note 61 for the definition of "small entity."

<sup>296</sup> A temporary hardship exemption would be available to advisers that submit electronic filings but are temporarily unable to do so. An adviser that receives a continuing hardship exemption could not apply for a temporary hardship exemption.

<sup>297</sup> (50 × 1) + (20 × 1) = 50 + 20 = 70 hours.

<sup>283</sup> This estimate assumes that an adviser requires no more than one half hour to distribute its brochure to a client.

<sup>284</sup> (200 fewer advisers × 24.5 hours) = 4,900 hours.

<sup>285</sup> Proposed amended rule 204-3(b)(1)(A) and Instruction 1 to Part 2A.

<sup>286</sup> See proposed rule 204-3(f).

<sup>287</sup> The annual offer, and delivery if the client accepts the offer, is required under current rules 204-3(c)(1) and (4).

<sup>288</sup> (0.25 hours × 49 clients) × 8,100 advisers = 12.25 × 8,100 advisers = 99,225 hours.

<sup>289</sup> The proposed rule amendment providing the transition from paper filings to electronic filings would require each adviser to distribute a revised brochure (and any brochure supplements) to its existing clients within thirty days from the end of the transition period. See proposed rule 204-3(i).

<sup>290</sup> 49 clients × .5 hours × 2 distributions per year = 49 hours.

<sup>291</sup> 8,100 advisers × 49 hours = 396,900 hours.

evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0609 with reference to File No. S7-10-00. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

## V. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (IRFA) in accordance with section 3(a) of the Regulatory Flexibility Act (RFA)<sup>298</sup> regarding the proposed amendments to Form ADV and other rules and forms under the Advisers Act.

### A. Reasons for the Proposed Action

As discussed in more detail in the IRFA, and above, we are proposing the rule and form amendments: (i) to facilitate the development of a system of electronic filing by investment advisers; (ii) to develop a database of information about advisers that is easily accessible to investors; and (iii) to improve the quality of disclosure advisers provide to their clients.

### B. Objectives

The IRFA explains that the rule proposal has three distinct, but related objectives. The first is to begin the process of creating a more efficient system of regulatory filing for investment advisers. The IARD will reduce regulatory costs for advisers by

permitting them to satisfy both state and SEC filing requirements by making a single, electronic filing through the Internet. The IARD will also give us a more effective tool to administer the federal securities laws as they apply to advisers.

The second objective is to improve public access to information about advisers. Currently, adviser filings are generally not available from commercial sources, and not otherwise easily available to investors. In 1996, Congress directed us to pursue this objective by requiring that we establish "a readily accessible \* \* \* electronic process to receive inquiries \* \* \* involving investment advisers \* \* \*."<sup>299</sup> The IARD will satisfy this directive by providing investors with direct access to information about advisers, at no cost, through the Internet. The third objective is to improve the quality of information investors receive from advisers about their fees, business practices and conflicts of interest. Advisers would be required to provide a narrative brochure that is written in plain English, and would be required to keep the brochure current.

To further these objectives, the proposals are designed to make full use of information technologies that are readily available to both large and small advisers. The IRFA explains that the proposed amendments also are designed to further our mandate under the federal securities laws to prevent fraud and require full disclosure of material information by participants in the securities markets.

### C. Small Entities Subject to the Rules

In developing these proposals, we have considered their potential effect on small entities that may be affected, which is discussed in the IRFA. The proposals would not affect most advisers that are small entities<sup>300</sup> (small advisers) because they are registered with one or more state securities authorities and not with us. Congress amended the Advisers Act in 1996 so that small advisers are generally regulated by states regulators and not the Commission.<sup>301</sup> Those small

advisers that remain registered with us are located in Wyoming (which does not have an advisers statute), or are eligible for an exemption that permits SEC registration. Of the approximately 20,000 advisers in the United States, 8,000 (40%) are registered with us. Of those 8,000, the IRFA estimates that only 1,500 (19%) qualify as small advisers. We have based this estimate on registration information advisers file with the Commission.

### D. Reporting, Recordkeeping, and Other Compliance Requirements

The IRFA states that the proposal would impose certain reporting and compliance requirements on small advisers, requiring them: (i) to file electronically through the IARD; (ii) to use amended Form ADV when applying for registration (or amending an existing registration); and (iii) to update and deliver certain information to clients (the "brochure" rule). These requirements are discussed more fully in the IRFA and Section II of this Release,<sup>302</sup> and the burdens on small advisers are discussed below.

#### 1. Electronic Filing Requirements

The IRFA explains that electronic filing is likely to impose two types of burdens on small advisers—filing fees and the time and expense of familiarizing themselves with the system.

**Filing Fees.** The operator of the IARD will charge filing fees to all advisers, including small advisers.<sup>303</sup> Small advisers will pay substantially smaller fees than larger advisers. Use of this sliding scale is designed to minimize the burdens of electronic filing on small advisers while maintaining the economic viability of the IARD. It also recognized that larger advisers, which are more likely to have filing requirements in multiple states, will benefit more from the IARD than small advisers.

**Other Burdens.** The IRFA explains that use of the IARD will impose other burdens on small advisers that must establish an account with NASDR,

<sup>302</sup> Specifically, the electronic filing requirements are discussed *supra* at Section II.B. and C. of this Release; the proposed amendments to Form ADV are discussed *supra* at Section II.D. of this Release; and the proposed information delivery requirements are discussed at Section II.D.2. of this Release.

<sup>303</sup> The rules we are proposing today will not themselves impose or authorize NASDR to impose any filing fee on advisers using the IARD. Section 203A(d) authorizes us to designate an operator of the filing system, and we expect to designate NASDR. The proposal would require advisers to use the system. Nonetheless, we have included the amount of the filing fees we estimate that NASDR will charge as part of our IRFA.

<sup>298</sup> 5 U.S.C. 603(a).

<sup>299</sup> See *supra* note 4.

<sup>300</sup> For purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if (a) it manages assets of less than \$25 million reported on its most recent Schedule I to Form ADV, (b) it does not have total assets of \$5 million or more on the last day of the most recent fiscal year, and (c) it is not in a control relationship with another investment adviser that is not a small entity. Advisers Act rule 0-7.

<sup>301</sup> See *supra* note 4 (citing amendments to the Advisers Act that divide regulatory authority over investment advisers between the Commission and the states).

devote time to familiarizing themselves with the IARD's filing rules, and perhaps obtain Internet access. We believe that these burdens are small and that advisers would incur most of the costs when they begin to use the IARD. Thereafter, use of the IARD should actually reduce regulatory burdens for all advisers, including small advisers.

Our information suggests that almost all investment advisers, including small advisers, currently have Internet access, and use the Internet for various purposes.<sup>304</sup> Nonetheless, our proposals would provide for a hardship exemption, available only to small advisers, which would permit them to continue to file on paper if using the IARD would impose an "unreasonable burden or expense."<sup>305</sup> The operator of the IARD would convert the paper filing to electronic format and charge the adviser an additional fee to cover conversion costs. In addition, the IARD will accommodate the use of commercial filing services, which we understand many small advisers currently use to make regulatory filings. We have included these alternative means of making filings to minimize the burdens the proposed electronic filing rules will have on small advisers.

Many small advisers today use filing services because they cannot hire professional compliance staff, and do not themselves have the knowledge, time, or expertise to understand the details of the various federal and state forms, deadlines, and fees. The IARD will have a number of features designed to make it easy for persons to complete Form ADV, even if they are unfamiliar with the form. We have written the new instructions in plain English and re-organized the form in a simpler manner. We have re-drafted questions that have presented interpretive difficulties for small advisers, and have added an on-line "help" function that will provide advisers with easy access to answers to questions frequently asked about the form. Advisers using the system will also have easy on-line access to the text of the Advisers Act and our rules. Together, these features should substantially benefit small advisers that do not have lawyers or other professional compliance personnel or staff.

The IRFA concludes that, although small advisers will experience some modest start-up costs and burdens in using the IARD, over time the system will actually reduce overall burdens. As

advisers become more familiar with it, use of the system should substantially reduce administrative costs associated with making regulatory filings, and improve advisers' compliance with regulatory requirements, allowing them to reduce their dependence, in more routine matters, on lawyers, compliance firms and others who assist them in meeting their regulatory obligations.

## 2. Proposed Amendments to Form ADV

*Part 1.* The IRFA explains that the proposed amendments to Part 1A of Form ADV would have a minimal effect on small advisers. None of the new items requests information that should not be readily available to the advisers. For example, advisers would be asked for the e-mail address of a contact person (if she has one) and the address of any web site the adviser sponsors. Further, because small advisers tend to have simpler business arrangements, fewer control persons, and fewer employees, the burdens of completing Part 1A should be significantly less for small advisers than for larger advisers.

The IRFA acknowledges that small advisers whose control persons have disciplinary history would likely spend more resources in completing the necessary DRPs for reporting of disciplinary events. Based on information filed on current Form ADV, we estimate that only approximately fourteen percent of advisers would be required to report disciplinary information, and thus most small advisers would be unaffected by this proposed requirement.<sup>306</sup> Even fewer advisers would be required to report disciplinary events on the revised form—we have proposed to eliminate certain items and limit advisers' reporting obligations to those disciplinary events occurring in the past ten years.

*Part 2.* The IRFA explains that the proposed amendments to Part 2, because they require advisers to begin preparing and disseminating narrative brochures, will impose additional costs on advisers, including small advisers. The IRFA assumes that all small advisers currently distribute Part II of Form ADV and will have to completely redraft their brochures, although some information in Part II may be transferable to the new brochures.

The costs associated with preparing the new brochures will depend on the size of the adviser, the complexity of its operations, and the extent to which its

operations present conflicts of interest with clients. Many of the new items imposing the most rigorous disclosure requirements may not apply to a small adviser because, for example, the adviser does not have soft dollar or directed brokerage arrangements, or does not have custody of client assets. To the extent that some of the new disclosure burdens do apply to small advisers, these advisers are already obligated to make the disclosures to clients under the Act's anti-fraud provisions (although not required to be in the brochure).

The IRFA explains that advisers would, for the first time, be required to prepare and disseminate brochure supplements for their supervised persons. To reduce the burdens on small advisers, we drafted the new supplement rules so that firms with few employees can include the information in their firm brochures and avoid preparing separate brochure supplements.<sup>307</sup>

## 3. Updating and Delivery Requirements

The IRFA explains that, in addition to proposing revisions to the brochure, we also propose to require advisers to update their brochure, deliver the updates to clients whenever the information becomes materially inaccurate, and offer a revised brochure annually.<sup>308</sup> These proposed requirements would impose some burdens on small advisers. To minimize these burdens, we would permit an adviser to deliver a "sticker" containing the updated information instead of requiring the adviser to reprint the entire brochure. In addition, advisers that deliver their brochures in electronic format also may deliver stickers and revised brochures in the same manner.<sup>309</sup> The IRFA states that small advisers are more likely to have fewer advisory clients than larger advisers, and thus the proposed updating and delivery requirements should impose lower variable costs on small advisers.

### E. Significant Alternatives

The IRFA discusses the various alternatives that the Commission considered in connection with the proposed rule and form amendments that might minimize the effect on small advisers, including (a) establishing different compliance or reporting requirements or timetables that take into

<sup>304</sup> See *supra* note 57 (discussing advisers' use of the Internet).

<sup>305</sup> See Proposed Form ADV-H, *infra* Appendix C of this Release.

<sup>306</sup> The 14% estimate is based on responses to Item 11 of current Form ADV. Item 11 currently includes several items that have an unlimited reporting period and other items that are unnecessary for our registration program.

<sup>307</sup> See discussion of proposed part 2B, *supra* Section II.D.2.b. of this Release.

<sup>308</sup> See discussion of the proposed delivery and updating requirements, *supra* at Section II.D.2.a. of this Release.

<sup>309</sup> See Investment Advisers Act Release No. 1562, *supra* note 123.

account the resources available to small advisers; (b) clarifying, consolidating, or simplifying compliance and reporting requirements under the proposed rule and rule amendments for small advisers; (c) using performance rather than design standards; and (d) exempting small advisers from coverage of all or part of the proposed rule and rule amendments.

Regarding the first alternative, the Commission considered establishing different compliance or reporting requirements for small advisers. As explained more fully in the IRFA, establishing different compliance or reporting requirements would be inconsistent with our mandate to provide a system of public disclosure of investment adviser information. The IRFA states that a small-entity adviser, by the nature of its business, would likely spend fewer resources in completing the new Form ADV, and will pay lower filing fees than those paid by a larger adviser.

Regarding the second alternative, it does not appear that the proposed rule and form amendments can be formatted differently for small advisers and still achieve the stated objectives of the proposal. Nonetheless, the proposed amendments would clarify and simplify the form for all advisers, including small advisers. As discussed more fully in the IRFA, we are also proposing to add a new item to Form ADV to capture specific information about small advisers so we can better assess the number of small advisers registered with us and the burdens imposed by our rules.

Regarding the third alternative, the IRFA explains that the proposed rule and form amendments would permit advisers to use performance rather than design standards in some instances. For example, we do not specify the means by which an adviser would deliver its brochure to clients.<sup>310</sup> In other contexts, however, the use of performance rather than design standards would be inconsistent with our statutory mandate to protect investors, as advisers must provide certain registration information in a uniform and quantifiable manner so that it is useful to our regulatory and examination programs. Design standards, therefore, are necessary to achieve many objectives of the proposal.

Regarding the fourth alternative, the IRFA states that it would be inconsistent with the purposes of the Advisers Act to exempt small advisers from the proposed rule and form amendments. The information in the adviser's brochure is necessary for the client to

evaluate the adviser's background, qualifications and services, and to apprise the client of potential conflicts of interest and of the adviser's financial condition. Clients of small advisers are entitled to the same disclosure required of larger advisers, and exempting small advisers from any of the proposed rule and form amendments would be inconsistent with a central purpose of the Advisers Act. We have incorporated several features intended to minimize the burden on small-entity investment advisers, such as the fact that any adviser with Internet access can file through the IARD, and that the system will have a "help" function to assist advisers. Smaller advisers can also apply for a continuing hardship exemption from the electronic filing requirements, as discussed above.

The IRFA states that, having considered the above alternatives in the context of the proposed rule and form amendments, and after taking into account the resources available to small advisers and the potential burden the proposal could place on investment advisers, the alternatives, except as noted above, would not accomplish the stated objectives of the proposal.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small advisers that would be affected by the proposals and the burdens the proposals would impose on small advisers. Commenters are asked to describe the nature of any burden and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the IRFA may be obtained by contacting Jeffrey O. Himstreet, Attorney, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549-0506.

## VI. Statutory Authority

We are proposing new rule 203-3 under sections 203(c)(1) and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1) and 80b-11(a)).

We are proposing amendments to rules 30-5 and 30-11 of our Organization and Program Management rules under sections 4A and 4B of the Securities Exchange Act of 1934 (15 U.S.C. 78d-1 and 78d-2).

We are proposing amendments to rule 0-2 under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15

U.S.C. 78a-37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)).

We are proposing amendments to rule 0-7 under chapter 6 of title 5 of the United States Code (particularly section 601 of that chapter (5 U.S.C. 601)) and section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11(a)).

We are proposing amendments to rules 203-1 and 203-2 under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)).

We are proposing amendments to rule 203A-1 under sections 203A(a)(1)(A), 203A(c), and section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a(a)(1)(A), 80b-3a(c), and 80b-11(a)).

We are proposing amendments to rule 203A-2 under section 203A(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a(c)).

We are proposing amendments to rules 204-1 under sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1) and 80b-4).

We are proposing amendments to rule 204-2 under sections 204 and 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4 and 80b-6(4)).

We are proposing amendments to rule 204-3 under sections 204, 206(4), and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4, 80b-6(4), and 80b-11(a)).

We are proposing new Form ADV-H under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)).

We are proposing amendments to rule 279.1, Form ADV, under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a) and 78bb(e)(2)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a-37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)).

We are proposing amendments to rule 279.2, Form ADV-W, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)).

We are proposing to amend rule 279.4, Form 4-R, by replacing it with proposed Form ADV-NR under section

<sup>310</sup> See Investment Advisers Act Release No. 1562, *supra* note 123.

19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a-37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)).

We are proposing to withdraw rule 204-5 under section 211(a) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-11(a)).

We are proposing to withdraw rule 206(4)-4 under section 206(4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(4)).

We are proposing to remove and reserve rules 279.5, 279.6 and 279.7 and proposing to remove Forms 5-R, 6-R, and 7-R under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a-37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)).

We are proposing to remove and reserve rule 279.9 and proposing to remove Form ADV-Y2K under section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11(a)).

#### List of Subjects

##### 17 CFR Part 200

Administrative practice and procedure; Authority delegations (Government agencies).

##### 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

#### Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority section for Part 200 continues to read in part as follows:

**Authority:** 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

\* \* \* \* \*

2. In § 200.30-5, the introductory text of paragraph (e) is revised and

paragraph (e)(7) is added to read as follows:

#### § 200.30-5 Delegation of authority to Director of Division of Investment Management.

\* \* \* \* \*

(e) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 to 80b-22):

\* \* \* \* \*

(7) Pursuant to section 203A(d) of the Act (15 U.S.C. 80b-3a(d)), to set the terms of, and grant or deny as appropriate, continuing hardship exemptions under § 275.203-3 of this chapter.

3. Section 200.30-11 is amended by revising paragraph (b)(2) to read as follows:

#### § 200.30-11 Delegation of authority to Associate Executive Director of the Office of Filings and Information Services.

\* \* \* \* \*

(b) \* \* \*

(2) Under section 203(h) of the Act (15 U.S.C. 80b-3(h)), to authorize the issuance of orders canceling registrations of investment advisers, or pending applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers.

\* \* \* \* \*

#### PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

4. The general authority citation for Part 275 is revised to read as follows:

**Authority:** 15 U.S.C. 80b-2(a)(11)(F), 80b-2(a)(17), 80b-3, 80b-4, 80b-6(4), 80b-6a, 80b-11, unless otherwise noted.

\* \* \* \* \*

5. Section 275.0-2 is revised to read as follows:

#### § 275.0-2 General procedures for serving non-residents.

(a) *General procedures for serving process, pleadings, or other papers on non-resident investment advisers, general partners and managing agents.* Under Forms ADV and ADV-NR (17 CFR 279.1 and 279.4), a person may serve process, pleadings, or other papers on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser by serving any or all of its appointed agents:

(1) A person may serve a non-resident investment adviser, non-resident general partner, or non-resident managing agent by furnishing the Commission with one copy of the process, pleadings, or papers, for each

named party, and one additional copy for the Commission's records.

(2) If process, pleadings, or other papers are served on the Commission as described in this section, the Secretary of the Commission (Secretary) will promptly forward a copy to each named party by registered or certified mail at that party's last address filed with the Commission.

(3) If the Secretary certifies that the Commission was served with process, pleadings, or other papers pursuant to paragraph (a)(1) of this section and forwarded these documents to a named party pursuant to paragraph (a)(2) of this section, this certification constitutes evidence of service upon that party.

(b) *Definitions.* For purposes of this section:

(1) *Managing agent* means any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

(2) *Non-resident* means:

(i) An individual who resides in any place not subject to the jurisdiction of the United States;

(ii) A corporation that is incorporated in or that has its principal office and place of business in any place not subject to the jurisdiction of the United States; and

(iii) A partnership or other unincorporated organization or association that has its principal office and place of business in any place not subject to the jurisdiction of the United States.

(3) *Principal office and place of business* has the same meaning as in § 275.203A-3(c) of this chapter.

6. In § 275.0-7, the introductory text of paragraph (a) is republished and paragraphs (a)(1) and (b)(1) are revised to read as follows:

#### § 275.0-7 Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(2) of the Act (15 U.S.C. 80b-3a(a)(2)) and reported on its annual updating amendment to Form ADV (17 CFR 279.1), of less than \$25 million, or such

higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A));

\* \* \* \* \*

(b) For purposes of this section:

(1) *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

(i) A person is presumed to control a corporation if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

(ii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

(iii) A person is presumed to control a limited liability company (LLC) if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC;

(B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or

(C) Is an elected manager of the LLC.

(iv) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

\* \* \* \* \*

7. Section 275.203-1 is revised to read as follows:

**§ 275.203-1 Application for investment adviser registration.**

(a) *Form ADV*. To apply for registration with the Commission as an investment adviser, you must complete and file Form ADV (17 CFR 279.1) by following the instructions in the Form.

(b) *Electronic filing*.

(1) If you apply for registration on or after \_\_\_\_, 2000, you must file electronically with the Investment Adviser Registration Depository (IARD), unless you have received a hardship exemption under § 275.203-3.

**Note to Paragraph (b):** Information on how to file with the IARD is available on our website at <<http://www.sec.gov/>>.

(2) Until the IARD begins to accept Part 2A of Form ADV (the brochure), you are not required to submit Part 2A with the Commission. Instead, you must maintain a copy of each amended form of brochure you use and provide it to SEC staff upon request. The brochure you maintain is considered filed with the Commission. We will notify you

when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file Part 2A with the IARD.

(c) *When filed*. Each Form ADV is considered filed with the Commission upon acceptance by the IARD.

(d) *Filing fees*. You must pay NASD Regulation, Inc. (NASDR) (the operator of the IARD) a filing fee, the amount of which is provided in the instructions to Form ADV, no portion of which is refundable. Your completed application for registration will not be accepted by NASDR, and thus will not be considered filed with the Commission, until you have paid the filing fee.

8. Section 275.203-2 is revised to read as follows:

**§ 275.203-2 Withdrawal from investment adviser registration.**

(a) *Form ADV-W*. You must file Form ADV-W (17 CFR 279.2) to withdraw from investment adviser registration with the Commission (or to withdraw a pending registration application).

(b) *Electronic filing*. Once you have filed your Form ADV (17 CFR 279.1) (or any amendments to Form ADV) electronically with the Investment Adviser Registration Depository (IARD), any Form ADV-W you file must be filed with the IARD, unless you have received a hardship exemption under § 275.203-3.

(c) *Effective date—upon filing*. Each Form ADV-W filed under this section is effective upon acceptance by the IARD.

(d) *Filing fees*. You do not have to pay a fee to file Form ADV-W on the IARD.

(e) *Form ADV-W is a report*. Each Form ADV-W required to be filed under this section is a "report" within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b-4 and 80b-7).

9. Section 275.203-3 is added to read as follows:

**§ 275.203-3 Hardship exemptions.**

This section provides two "hardship exemptions" from the requirement to make Advisers Act filings electronically.

(a) *Temporary hardship exemption*.

(1) *Eligibility for exemption*. If you are registered with the Commission as an investment adviser and submit electronic filings on the Investment Adviser Registration Depository (IARD) system, but have unanticipated technical difficulties that prevent you from submitting a filing to the IARD system, you may request a temporary hardship exemption from the requirements of this chapter to file electronically.

(2) *Application procedures*. To request a temporary hardship exemption, you must:

(i) File Form ADV-H (17 CFR 279.3) in paper format with NASD Regulation, Inc. (NASDR) no later than one business day after the filing that is the subject of the ADV-H was due; and

(ii) Submit the filing that is the subject of the Form ADV-H in electronic format to NASDR no later than seven business days after the filing was due.

(3) *Effective date—upon filing*. The temporary hardship exemption will be granted when you file a completed Form ADV-H with NASDR.

(b) *Continuing hardship exemption*.

(1) *Eligibility for exemption*. If you are a "small business" (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption. The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

(2) *Application procedures*. To apply for a continuing hardship exemption, you must file Form ADV-H with NASDR at least ten business days before a filing is due. The Commission will grant or deny your application within ten business days after filing Form ADV-H.

(3) *Effective date—upon approval*. You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to NASDR in paper format for the period of time for which the exemption is granted.

(4) *Criteria for exemption*. Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

(5) *Small business*. You are a "small business" for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked "no" to each question in Item 12 that you were required to answer.

**Note to Paragraphs (a) and (b):** NASDR will charge you an additional fee covering its cost to convert to electronic format a filing made in reliance on a continuing hardship exemption.

10. Section 275.203A-1 is revised to read as follows:

**§ 275.203A-1 Eligibility for SEC registration; switching to or from SEC registration.**

(a) *Eligibility for SEC registration*.

(1) *Threshold for SEC registration—\$30 million of assets under management*. If the State where you maintain your principal office and place of business has enacted an investment

adviser statute, you are not required to register with the Commission, unless:

(i) You have assets under management of at least \$30,000,000, as reported on your Form ADV (17 CFR 279.1); or

(ii) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64).

(2) *Exemption for investment advisers having between \$25 and \$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you may register with the Commission if you have assets under management of at least \$25,000,000 but less than \$30,000,000, as reported on your Form ADV (17 CFR 279.1). This paragraph (a)(2) shall not apply if:

(i) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64); or

(ii) You are eligible for an exemption described in § 275.203A-2 of this chapter.

**Note to Paragraphs (a)(1) and (a)(2):**

Paragraphs (a)(1) and (a)(2) of this section together make SEC registration optional for certain investment advisers that have between \$25 and \$30 million of assets under management.

(b) *Switching to or from SEC registration.*

(1) *State-registered advisers—switching to SEC registration.* If you are registered with a State securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating amendment to your Form ADV reporting that you have at least \$30 million of assets under management.

(2) *SEC-registered advisers—switching to State registration.* If you are registered with the Commission and file an annual updating amendment to your Form ADV reporting that you no longer have \$25 million of assets under management (or are not otherwise eligible for SEC registration), you must file Form ADV-W (17 CFR 279.2) to withdraw your SEC registration within 180 days of your fiscal year end (unless you then have at least \$25 million of assets under management or are otherwise eligible for SEC registration). During this period while you are registered with both the Commission and one or more State securities authorities, the Investment Advisers Act of 1940 and applicable State law will apply to your advisory activities.

11. Section 275.203A-2 is amended as follows:

a. The introductory text is republished;

b. In paragraph (b)(3), the phrase “Schedule I” is revised to read “an annual updating amendment”;

c. The introductory text to paragraph (d) is republished;

d. Paragraphs (d)(2) and (d)(3) are revised;

e. The introductory text to paragraph (e) is republished; and

f. Paragraphs (e)(2), (e)(3) and (e)(4) are revised to read as follows:

**§ 275.203A-2 Exemptions from prohibition on SEC registration.**

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b-3a(a)) does not apply to:

\* \* \* \* \*

(d) *Investment advisers expecting to be eligible for SEC registration within 120 Days.* An investment adviser that:

\* \* \* \* \*

(2) Indicates on Schedule D of its Form ADV (17 CFR 279.1) that it will withdraw from registration with the Commission if, on the 120th day after the date the investment adviser’s registration with the Commission becomes effective, the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b-3a(a)) from registering with the Commission; and

(3) Notwithstanding § 275.203A-1(b)(2) of this chapter, files a completed Form ADV-W (17 CFR 279.2) withdrawing from registration with the Commission within 120 days after the date the investment adviser’s registration with the Commission becomes effective.

(e) *Multi-state investment advisers.* An investment adviser that:

\* \* \* \* \*

(2) Indicates on Schedule D of its Form ADV that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the State securities authorities in the respective States or, in the case of an amendment to Form ADV, it would be required by the laws of at least 25 States to register as an investment adviser with the State securities authorities in the respective States, within 90 days prior to the date of filing Form ADV;

(3) Undertakes on Schedule D of its Form ADV to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that the investment adviser would be required by the laws of fewer than 25 States to

register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b-3a(a)) from registering with the Commission, by filing a completed Form ADV-W within 180 days of the adviser’s fiscal year end (unless the adviser then has at least \$25 million of assets under management or are otherwise eligible for SEC registration); and

(4) Maintains in an easily accessible place a record of the States in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV that includes a representation that is based on such record.

12. Section 275.204-1 is revised to read as follows:

**§ 275.204-1 Amendments to application for registration.**

(a) *When amendment is required.* You must amend your Form ADV (17 CFR 279.1):

(1) At least annually, within 90 days of the end of your fiscal year; and

(2) More frequently, if required by the instructions to Form ADV.

(b) *Electronic filing.*

(1) If you are an investment adviser registered with the Commission on \_\_\_\_\_, 2000, you must amend your Form ADV by electronically filing a completed Part 1A of Form ADV (as amended on \_\_\_\_\_, 2000) with the Investment Adviser Registration Depository (IARD) as follows:

(i) \_\_\_\_\_ must file no later than \_\_\_\_\_;

(ii) \_\_\_\_\_ must file no later than \_\_\_\_\_;

(iii) \_\_\_\_\_ must file no later than \_\_\_\_\_; and

(iv) \_\_\_\_\_ must file no later than \_\_\_\_\_.

**Note to Paragraphs (a) and (b):** Information on how to file with the IARD is available on our website at <<http://www.sec.gov/>>.

(2) If you are an investment adviser with a pending registration application on \_\_\_\_\_, 2000, you must amend your Form ADV by electronically filing a completed Part 1A of Form ADV (as amended on \_\_\_\_\_, 2000) with the IARD by (date used in paragraph (b)(1)(iv)).

(3) If you have received a hardship exemption under § 275.203-3, you must file a completed Part 1A of Form ADV on paper with NASD Regulation, Inc. (NASDR) when you are required to

amend your Form ADV by the schedule in paragraph (b)(1) of this section.

(4) If you have filed Part 1A of Form ADV with the IARD under paragraphs (b)(1) or (b)(2) of this section, you must file all subsequent amendments to your Form ADV with the IARD.

(c) *Special rule for part 2.* When resubmitting Form ADV in accordance with paragraph (b) of this section, you are not required to submit Part 2A of Form ADV (the firm brochure). Until the IARD begins to accept Part 2A of Form ADV, you must maintain a copy of each amended form of your firm brochure you use and provide it to SEC staff upon request. The firm brochure you maintain is considered filed with the Commission. We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file Part 2A with the IARD. You are not required to file Part 2B of Form ADV (the brochure supplements) with the Commission.

**Note to Paragraph (c):** You are required by § 204–3(i) to begin using your new firm brochure and all required brochure supplements by (date used in paragraph (b)(1)(iv)), and to deliver your new firm brochure and all required brochure supplements to each of your current advisory clients by (30 days after the date in paragraph (b)(1)(iv)).

(d) *Filing fees.* You must pay NASDR (the operator of the IARD) an annual filing fee at the time you file your annual updating amendment, no portion of which is refundable. The filing fees are provided in the instructions to Form ADV. Your amended Form ADV will not be accepted by NASDR, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(e) *Amendments to Form ADV are reports.* Each amendment required to be filed under this section is a “report” within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b–4 and 80b–7).

13. Section 275.204–2 is amended by revising paragraph (a)(14) to read as follows:

**§ 275.204–2 Books and records to be maintained by investment advisers.**

(a) \* \* \*

(14)(i) A copy of each written statement, and each amendment or revision to the written statement, given or sent to any advisory client or prospective client as required by Rule 204–3 under the Act; any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and a record of the dates that each written statement, each amendment or revision thereto,

and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client.

(ii) A memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in paragraph (a)(14)(i) of this section. The memorandum must explain the investment adviser’s determination that the presumption of materiality is overcome, and must discuss the factors described in those items.

\* \* \* \* \*

14. Section 275.204–3 is revised to read as follows:

**§ 275.204–3 Delivery of firm brochures and brochure supplements.**

(a) *General requirements.* If you are registered under the Act as an investment adviser, you must offer and deliver a firm brochure and one or more supplements to each client or prospective client as required by this section. The brochure and supplement(s) must contain all information required by Part 2 of Form ADV (17 CFR 279.1).

(b) *Offer and delivery requirements.* (1) You (or a supervised person acting on your behalf) must deliver to a client or prospective client:

(i) Your current brochure before or at the time you enter into a written or oral investment advisory contract with the client, and

(ii) A current brochure supplement for a supervised person before or at the time that supervised person begins to provide advisory services to the client. For purposes of this section, a supervised person will provide advisory services to a client if the supervised person will:

(A) Regularly communicate investment advice to that client, or

(B) Formulate investment advice for assets of that client, or make discretionary investment decisions for assets of that client.

(2) At least once a year, you must deliver or offer each advisory client a copy of your current brochure and any brochure supplements that you are required to deliver under paragraph (b)(1)(ii) of this section. Your offer must be in writing. If a client accepts your offer, you must send the current brochure and supplements to that client, without charge, within seven days after you are notified of the acceptance.

(c) *Exceptions to delivery requirement.* (1) You are not required to deliver a brochure or brochure

supplement when you enter into an investment company contract.

(2) You are not required to deliver a brochure supplement when you enter into a contract for impersonal investment advice. Further, if you charge less than \$500 per year under that contract, you are not required to deliver a brochure when you enter into the contract.

(d) *Delivery to limited partners.* If, as an adviser, you are the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section you must treat each of the partnership’s limited partners, the company’s members, or the trust’s beneficial owners as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a “limited partnership.”

(e) *Wrap fee program brochures.*

(1) If you are a sponsor of a wrap fee program, then the brochure that paragraph (b)(1)(i) of this section requires you to deliver to a client or prospective client of the wrap fee program must be a wrap fee brochure containing all information required by Part 2A Appendix 1 of Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that you sponsor.

(2) You do not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers, to the client or prospective client of the wrap fee program, a wrap fee program brochure containing all the information your wrap fee program brochure must contain.

**Note to paragraph (e):** A wrap fee brochure does not take the place of any brochure supplements that you are required to deliver under paragraph (b)(1)(ii) of this section.

(f) *Updates and amendments.* You must amend your brochure and any brochure supplement and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating instructions that you must follow.

(g) *Multiple brochures.* If you provide substantially different advisory services to different clients, you may provide them with different brochures, so long as each client receives all applicable information about services and fees. The brochure you deliver to an advisory client may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that you will

provide or charge, or that you propose to provide or charge, to that client.

(h) *Other disclosure obligations.* Delivering a brochure or supplement in compliance with this section does not relieve you of any other disclosure obligations you have to your advisory clients or prospective clients under any federal or State laws or regulations.

(i) *Transition rule.* (1) By (date used in rule 204-1(b)(1)(iv)), you must begin using your current brochure and all required brochure supplements to comply with this section.

(2) By (30 days after the date used in rule 204-1(b)(1)(iv)), you must deliver to each of your advisory clients your current brochure and all required brochure supplements.

(j) *Definitions.* For purposes of this section:

(1) *Contract for impersonal investment advice* means a contract for investment advisory services that does not purport to meet the objectives or needs of specific individuals or accounts.

(2) *Current brochure and current brochure supplement* mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (i.e., stickers).

(3) *Investment company contract* means a contract with an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) that meets the requirements of section 15(c) of that Act (15 U.S.C. 80a-15(c)).

(4) *Sponsor of a wrap fee program* means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

(5) *Supervised person* means any of your officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on your behalf.

(6) *Wrap fee program* means an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

#### § 275.204-5 [Removed and Reserved]

15. Section 275.204-5 is removed and reserved.

#### § 275.206(4)-4 [Removed and Reserved]

16. Section 275.206(4)-4 is removed and reserved.

### PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

17. The authority citation for Part 279 is revised to read as follows:

**Authority:** 15 U.S.C. 80b-1 to 80b-22.

18. Form ADV (referenced in § 279.1) is revised.

**Note:** The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations. Form ADV is attached as Appendix A.

19. Form ADV-W (referenced in § 279.2) is revised.

**Note:** The text of Form ADV-W does not and the amendments will not appear in the Code of Federal Regulations. Form ADV-W is attached as Appendix B.

20. Section 279.3 and Form ADV-H are added as follows.

**Note:** The text of Form ADV-H will not appear in the Code of Federal Regulations. Form ADV-H is attached as Appendix C.

#### § 279.3 Form ADV-H, application for a temporary or continuing hardship exemption.

An investment adviser must file this form under § 275.203-3 of this chapter to request a temporary hardship exemption or apply for a continuing hardship exemption.

21. Form 4-R (referenced in § 279.4) is removed.

22. Section 279.4 is revised and Form ADV-NR is added as follows:

**Note:** Form ADV-NR will not appear in the Code of Federal Regulations. Form ADV-NR is attached as Appendix D.

#### § 279.4 Form ADV-NR, appointment of agent for service of process by non-resident general partner and non-resident managing agent of an investment adviser.

Each non-resident general partner or managing agent of an investment adviser must file this form under § 275.0-2 of this chapter.

#### § 279.5 [Removed and Reserved]

23. Section 279.5 and Form 5-R are removed and reserved.

**Note:** Form 5-R does not appear in the Code of Federal Regulations.

#### § 279.6 [Removed and Reserved]

24. Section 279.6 and Form 6-R are removed and reserved.

**Note:** Form 6-R does not appear in the Code of Federal Regulations.

#### § 279.7 [Removed and Reserved]

25. Section 279.7 and Form 7-R are removed and reserved.

**Note:** Form 7-R does not appear in the Code of Federal Regulations.

#### § 279.9 [Removed and Reserved]

26. Section 279.9 and Form ADV-Y2K are removed and reserved.

**Note:** Form ADV-Y2K does not appear in the Code of Federal Regulations.

By the Commission.

Dated: April 5, 2000.

**Margaret H. McFarland,**  
*Deputy Secretary.*

(Note: Appendixes A, B, C, and D will not appear in the Code of Federal Registration)

### Appendix A—Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

#### Form ADV: General Instructions

Read these instructions carefully before filing Form ADV. Failure to follow these instructions, properly complete the form, and pay all required fees may result in your filing being returned to you. Electronic filers should follow the instructions available online, which are different.

In these instructions and in the form, “you” means the investment adviser (i.e., the advisory firm) applying for registration or amending its registration. If you are a “separately identifiable department or division” (SID) of a bank, “you” means the SID, rather than your bank, unless the instructions or the form provide otherwise. Terms that appear in *italics* are defined in the Glossary of Terms to Form ADV.

#### 1. What is Form ADV used for?

Investment advisers use Form ADV to:

- Register with the Securities and Exchange Commission.
- Register with one or more *state securities authorities*.
- Amend those registrations.

Form ADV also contains the requirements for the *brochure* you must deliver to *clients* under SEC rule 204-3 and similar state rules.

#### 2. How is Form ADV organized?

Form ADV contains four parts:

- Part 1A asks a number of questions about you, your business practices, the *persons* who own and *control* you, and the *persons* who provide investment advice on your behalf. All advisers registering with the SEC or any of the *state securities authorities* must complete Part 1A.

Part 1A also contains several schedules that supplement Part 1A. The items of Part 1A let you know which schedules you must complete.

- Schedule A asks for information about your direct owners and executive officers.
- Schedule B asks for information about your indirect owners.
- Schedule C is used by paper filers to update the information required by Schedules A and B (see Instruction 13).

- Schedule D asks for additional information for certain items in Part 1A.
- Disclosure Reporting Pages (or “DRPs”) ask for details about disciplinary events involving you or *persons* affiliated with you. (These are considered schedules too.)
- Part 1B asks additional questions required by *state securities authorities*. Part 1B contains three DRPs. If you are applying for registration or are registered only with the SEC, you do not have to complete Part 1B. (If you are filing electronically and you do not have to complete Part 1B, you will not see Part 1B.)
- Part 2A contains the requirements for preparing the *brochure* that SEC rule 204–3 and similar state rules require you to deliver to your *clients*. The *brochure* provides information about your business practices, fees and any conflicts of interest you may have with your *clients*. If you *sponsor wrap fee programs*, you must create a separate *brochure* that discloses information about these programs. Appendix 1 to Part 2 contains the requirements for preparing a *wrap fee program brochure*. Instructions to Part 2A explain when a *brochure* must be delivered.
- Part 2B contains the requirements for preparing *brochure* supplements about your *supervised persons*. Instructions to Part 2B explain for which *supervised persons* you must prepare a supplement and to which *clients* you must deliver the supplement.

### 3. When am I required to update my Form ADV?

You must amend your Form ADV annually by filing an *annual updating amendment* within 90 days after the end of your fiscal year. When you submit your *annual updating amendment*, you must update your responses to all items.

In addition to your *annual updating amendment*, you must amend your Form ADV by filing additional amendments (other-than-annual amendments) *promptly* if:

- information you provided in response to Items 1, 3, 9, or 11 of Part 1A or Items 1, 2.A.–2.F., or 2.I. of Part 1B become inaccurate in any way;
- information you provided in response to Items 4, 7, 8, or 10 of Part 1A or Item 2.G. of Part 1B become *materially* inaccurate; or
- any information in Part 2 (your *brochure* or a *brochure* supplement) becomes *materially* inaccurate.

If you are submitting an other-than-annual amendment, you are not required to update your responses to Items 2, 5, 6, or 12 of Part 1A or Items 2.H. or 2.J. of Part 1B even if your responses to those items have become inaccurate. You must update your responses to all other items in Part 1 whenever you amend your Form ADV.

**Failure to update your Form ADV, as required by this instruction, is a violation of SEC rule 204–1 and similar state rules and could lead to your registration being revoked.**

### 4. Where do I sign my Form ADV application or amendment?

You must sign the appropriate Execution Page. There are three Execution Pages at the end of the form. Your initial application and

all amendments to Form ADV must include at least one Execution Page.

- If you are applying for or amending your SEC registration, you must sign and submit either a:
  - Domestic Investment Adviser Execution Page, if you (the advisory firm) are a resident of the United States; or
  - *Non-Resident* Investment Adviser Execution Page, if you (the advisory firm) are not a resident of the United States.
- If you are applying for or amending your registration with a *state securities authority*, you must sign and submit the State-Registered Investment Adviser Execution Page.

### 5. Who must sign my Form ADV or amendment?

The individual who signs the form depends upon your form of organization:

- For a sole proprietorship, the sole proprietor.
- For a partnership, a general partner.
- For a corporation, an authorized principal officer.
- For a “separately identifiable department or division” (SID) of a bank, a principal officer of your bank who is directly engaged in the management, direction or supervision of your investment advisory activities.
- For all others, an authorized individual who participates in managing or directing your affairs.

The signature does not have to be notarized.

### 6. How do I file my Form ADV?

Until [completion date of transition to electronic filing in rule 204–1(b)(i)(D)], you must follow the instructions in [transition instructions that will be included with the adopting release for Form ADV] to determine how you should file. After [date in rule 204–1(b)(i)(D)], follow this Instruction 6.

Complete Form ADV electronically using the Investment Adviser Registration Depository (IARD) if:

- You are filing with the SEC (and submitting *notice filings* to any of the *state securities authorities*), or
  - You are filing with a *state securities authority* that requires or permits advisers to submit Form ADV through the IARD.
- Complete Form ADV (Paper Version) on paper if:
- You are filing with the SEC or a *state securities authority* that requires electronic filing, but you have been granted a continuing hardship exemption. Hardship exemptions are described in Instruction 12.
  - You are filing with a *state securities authority* that permits (but does not require) electronic filing and you do not file electronically.

### 7. How do I get started filing electronically?

There are two things you must do to get started filing electronically:

- You must request a user I.D. code and password by completing and submitting Form ADV–ID to NASDR. You can get a copy of Form ADV–ID from any of the following web sites: <www.sec.gov>, <www.nasaa.org>, and <www.nasdr.com>. Form ADV–ID must be submitted on paper.

Mail the form to [address] or fax it to [fax number].

- You must establish an IARD account with NASDR, from which the IARD will deduct filing fees and any *state* fees you are required to pay. If you have a *CRD* account with NASDR, you do not need to establish a separate IARD account. To establish an IARD account, [to be determined].

Once you receive your user I.D. and password and you have an account, you are ready to file electronically.

### 8. If I am applying for registration with the SEC, or amending my SEC registration, how do I make notice filings with the state securities authorities?

If you are applying for registration with the SEC or amending your SEC registration, the *state securities authorities* of states in which you are “doing business” may require you to provide them with copies of your SEC filings. We call these filings “*notice filings*.” Your *notice filings* will be sent electronically to the *states* that you check on Item 2.B. of Part 1A. The *state securities authorities* to which you send *notice filings* may charge fees, which will be deducted from the account you establish with NASDR. To determine which *state securities authorities* require SEC-registered advisers to submit *notice filings* and to pay fees, consult the investment adviser law or the *state securities authority* for the particular state in which you are “doing business.” See General Instruction 15.

If you are granted a continuing hardship exemption to file Form ADV on paper, NASDR will enter your filing into the IARD and your *notice filings* will be sent electronically to the *state securities authorities* that you check on Item 2.B. of Part 1A.

### 9. I am registered with a state. When must I switch to SEC registration?

If you report on your *annual updating amendment* that your assets under management have increased to \$30 million or more, you must register with the SEC within 90 days after you file that *annual updating amendment*. If your assets under management increase to \$25 million or more but not \$30 million, you may, but are not required to, register with the SEC (assuming you are not otherwise required to register with the SEC). Once you register with the SEC, you are subject to SEC regulation, regardless of whether you remain registered with one or more *states*. Each of your *investment adviser representatives*, however, may be subject to registration in those states in which the representative has a place of business. See SEC rule 203A–1(b). For additional information, consult the investment adviser laws or the *state securities authority* for the particular state in which you are “doing business.” See General Instruction 15.

### 10. I am registered with the SEC. When must I switch to registration with a state securities authority?

If you report on your *annual updating amendment* that you have assets under management of less than \$25 million and you are not otherwise eligible to register with the SEC, you must withdraw from SEC

registration within 180 days after the end of your fiscal year by filing Form ADV-W. You should consult state law in the states that you are doing business to determine if you are required to register in these states. See General Instruction 15. Until you file your Form ADV-W with the SEC, you will remain subject to SEC regulation, and you also will be subject to regulation in any states where you register. See SEC rule 203A-1(b).

#### 11. Are there filing fees?

Yes. These fees go to support and maintain the IARD. The IARD filing fees are in addition to any registration or other fee that may be required by state law. You must pay an IARD filing fee for your initial application and each *annual updating amendment*.

There is no filing fee for an other-than-annual amendment or Form ADV-W. The IARD filing fee schedule is as follows:

[to be determined]

If you are submitting a paper filing under a continuing hardship exemption (see Instruction 12), you are required to pay an additional fee. The amount of the additional fee depends on the type of filing you are submitting. The hardship filing fee schedule is as follows:

[to be determined]

#### 12. What if I am not able to file electronically?

If you cannot file electronically, you may be eligible for one of two types of hardship exemptions from the electronic filing requirements.

- A **temporary hardship exemption** is available if you file electronically, but you encounter unexpected difficulties that prevent you from making a timely filing with the IARD, such as a computer malfunction or electrical outage. This exemption does *not* permit you to file on paper; instead, it extends the deadline for an electronic filing for seven business days. See SEC rule 203-3(a).

- A **continuing hardship exemption** may be granted if you are a small business and you can demonstrate that filing electronically would impose an undue hardship. You are a small business, and may be eligible for a continuing hardship exemption, if you are required to answer Item 12 of Part 1A (because you have assets under management of less than \$25 million) *and* you are able to respond "no" to each question in Item 12. See SEC rule 0-7.

If you have been granted a continuing hardship exemption, you must complete and file the paper version of Form ADV with NASDR. NASDR will enter your responses into the IARD. As discussed in General Instruction 11, NASDR will charge you a fee to reimburse it for the expense of data entry.

Before applying for a continuing hardship exemption, consider engaging a firm that assists investment advisers in making filings with the IARD. Check the SEC's web site to obtain a list of firms that provide these services.

#### 13. I am eligible to file on paper. How do I make a paper filing?

When filing on paper, you must:

- Type all of your responses.

- Include your name (the same name you provide in response to Item 1.A. of Part 1A) and the date on every page.

- If you are amending your Form ADV:
  - complete page 1 and circle the number of any item for which you are changing your response.

- include your SEC 801-number (if you have one) and your *CRD* number (if you have one) on every page.

- complete the amended item in full and circle the number of the item for which you are changing your response.

- to amend Schedule A or Schedule B, complete and submit Schedule C.

Where you submit your paper filing depends on why you are eligible to file on paper:

- If you are filing on paper because you have been granted a continuing hardship exemption, submit one manually signed Form ADV and one copy to: NASD Regulation, Inc., [address to be determined].

**If you complete Form ADV on paper and submit it to NASDR but you do not have a continuing hardship exemption, the submission will be returned to you.**

- If you are filing on paper because a *state* in which you are registered or applying for registration allows you to submit paper instead of electronic filings, submit one manually signed Form ADV and one copy to the appropriate *state securities authorities*.

#### 14. Who is required to file Form ADV-NR?

Every *non-resident* general partner and *managing agent* of all SEC-registered advisers, whether or not the adviser is resident in the United States, must file Form ADV-NR in connection with the adviser's initial application. A general partner or *managing agent* of an SEC-registered adviser who becomes a *non-resident* after the adviser's initial application has been submitted must file Form ADV-NR within 30 days. Form ADV-NR must be filed on paper (it cannot be filed electronically).

Submit Form ADV-NR to the SEC at the following address: Securities and Exchange Commission, [address to be determined].

**Failure to file Form ADV-NR promptly may delay SEC consideration of your initial application.**

#### 15. Where can I get additional information?

The SEC provides additional information about its rules and the Advisers Act on its website: <www.sec.gov>.

NASAA provides additional information about state investment adviser laws and state rules, and how to contact a *state securities authority*, on its website: <www.nasaa.org>.

#### Federal Information Law and Requirements

Advisers Act Sections 203(c), 204, 206 and 211(a) authorize the SEC to collect the information required by Form ADV. The SEC uses the information for regulatory purposes, including deciding whether to grant registration. The SEC keeps files of the information submitted on this form and makes the information publicly available. The SEC may reject forms that do not include required information. By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly. Intentional misstatements or

omissions constitute federal criminal violations under 18 U.S.C. § 1001 and 15 U.S.C. § 80b-17.

#### SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Advisers Act authorizes the SEC to collect the information on Form ADV from applicants. See 15 U.S.C. §§ 80b-3(c)(1) and 80b-4. Filing the form is mandatory.

The main purpose of this form is to enable the SEC to register investment advisers. Every applicant for registration with the SEC as an adviser must file the form. See 17 C.F.R. § 275.203-1. The form is filed annually by every adviser, no later than 90 days after the end of its fiscal year, to amend its registration. It also is filed promptly during the year to reflect material changes. See 17 C.F.R. § 275.204-1. The SEC maintains the information on the form and makes it publicly available through the IARD.

Anyone may send the SEC comments on the accuracy of the burden estimate on page 1 of the form, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. § 3507.

The information contained in the form is part of a system of records subject to the Privacy Act of 1974, as amended. The SEC has published in the **Federal Register** the Privacy Act System of Records Notice for these records.

#### Form ADV (Paper Version); Uniform Application for Investment Adviser Registration

##### Form ADV: Instructions for Part 1A

These instructions explain how to complete certain items in Part 1A of Form ADV.

##### 1. Item 1: Identifying Information

If you are a "separately identifiable department or division" (SID) of a bank, answer Item 1.A. with the full legal name of your bank, and answer Item 1.B. with your own name (the name of the department or division) and all names under which you conduct your advisory business. In addition, your *principal office and place of business* in Item 1.F. should be the principal office at which you conduct your advisory business. In response to Item 1.I., the World Wide Web site addresses you list on Schedule D should be sites that provide information about your advisory business, rather than general information about your bank.

##### 2. Item 2: SEC Registration

If you are registered or applying for registration with the SEC, you must indicate in Item 2.A. why you are eligible to register with the SEC by checking one or more boxes.

a. **Item 2.A(1): Adviser with Assets Under Management of \$25 Million or More.** You may check box 1 *only* if your response to Item 5.F(2)(c) is \$25 million or more. While you *may* register with the SEC if your assets under management are at least \$25 million but less than \$30 million, you *must* register

with the SEC if your assets under management are \$30 million or more. Part 1A Instruction 5.b. explains how to calculate your assets under management.

If you are a state-registered adviser and you report on your *annual updating amendment* that your assets under management increased to \$25 million or more, you *may* register with the SEC. If your assets under management increased to \$30 million or more, you *must* register with the SEC within 90 days after you file that *annual updating amendment*. See SEC rule 203A-1(b) and Form ADV General Instruction 9.

**b. Item 2.A(4): Adviser to an Investment Company.** You may check box 4 *only* if you currently provide advisory services under an investment advisory contract to an investment company registered under the Investment Company Act of 1940 and the investment company is operational (*i.e.*, has assets and shareholders, other than just the organizing shareholders). See section 203A(a)(1)(B) of the Advisers Act. Advising investors about the merits of investing in mutual funds or recommending particular mutual funds does not make you eligible to check this box.

**c. Item 2.A(5): Nationally Recognized Statistical Rating Organization.** You may check box 5 *only* if you are designated as a nationally recognized statistical rating organization pursuant to an application filed under paragraph (c)(13)(i) of SEC rule 15c3-1 under the Securities Exchange Act of 1934. See SEC rule 203A-2(a). This designation generally is limited to rating agencies, such as Moody's and Standard & Poor's.

**d. Item 2.A(6): Pension Consultant.** You may check box 6 *only* if you are eligible for the pension consultant exemption from the prohibition on SEC registration.

- You are eligible for this exemption if you provided investment advice to employee benefit plans, governmental plans, or church plans with respect to assets having an aggregate value of \$50 million or more during the 12-month period that ended within 90 days of filing this Form ADV. You are *not* eligible for this exemption if you only advise *clients* on allocating their investments within their pension plans. See SEC rule 203A-2(b).

- To calculate the value of assets for purposes of this exemption, aggregate the assets of the plans for which you provided advisory services at the end of the 12-month period. If you provided advisory services to other plans during the 12-month period, but your employment or contract terminated before the end of the 12-month period, you also may include the value of those assets.

**e. Item 2.A(7): Affiliated Adviser.** You may check box 7 *only* if you are eligible for the affiliated adviser exemption from the prohibition on SEC registration. See SEC rule 203A-2(c). You are eligible for this exemption if you *control*, are *controlled by*, or *are under common control with* an investment adviser that is registered with the SEC, and you have the same *principal office and place of business* as that other investment adviser. If you check box 7, you also must complete Section 2.A(7) of Schedule D.

**f. Item 2.A(8): Newly-Formed Adviser.** You may check box 8 *only* if you are eligible for

the newly-formed-adviser exemption from the prohibition on SEC registration. See SEC rule 203A-2(d). You are eligible for this exemption if:

- Immediately before you file your application for registration with the SEC, you were not registered or required to be registered with the SEC or a *state securities authority*; and
- At the time of your formation, you have a reasonable expectation that within 120 days of registration you will be eligible for SEC registration.

If you check box 8, you also must complete Section 2.A(8) of Schedule D.

You must file an amendment to Part 1A of your Form ADV that updates your response to Item 2.A. within 120 days after the SEC declares your registration effective. You may not check box 8 on your amendment; since this exemption is available only if you are not registered, you may not "re-rely" on this exemption. If you indicate on that amendment (by checking box 11) that you are not eligible to register with the SEC, you also must at that same time file a Form ADV-W to withdraw your SEC registration.

**g. Item 2.A(9): Multi-State Adviser.** You may check box 9 *only* if you are eligible for the multi-state adviser exemption from the prohibition on SEC registration. See SEC rule 203A-2(e). You are eligible for this exemption if you are required to register as an investment adviser with the securities authorities of 30 or more *states*. If you check box 9, you must complete Section 2.A(9) of Schedule D. You must complete Section 2.A(9) of Schedule D in each *annual updating amendment* you submit.

If you check box 9, you also must:

- Create and maintain a list of the *states* in which, but for this exemption, you would be required to register;
- Update this list each time you submit an *annual updating amendment* in which you continue to represent that you are eligible for this exemption; and
- Maintain the list in an easily accessible place for a period of not less than five years from each date on which you indicate that you are eligible for the exemption.

If, at the time you file your *annual updating amendment*, you are required to register in less than 25 *states* and you are not otherwise eligible to register with the SEC, you must check box 11 in Item 2.A. You also must file a Form ADV-W to withdraw your SEC registration. See Part 1A Instruction 2.h.

**h. Item 2.A(11): Adviser No Longer Eligible to Remain Registered with the SEC.** You *must* check box 11 if:

- You are registered with the SEC;
- You are filing an *annual updating amendment* to Form ADV in which you indicate in response to Item 5.F(2)(c) that you have assets under management of less than \$25 million; and
- You are not eligible to check any other box (other than box 11) in Item 2.A. (and are therefore no longer eligible to remain registered with the SEC).

You must withdraw from SEC registration within 180 days after the end of your fiscal year by filing Form ADV-W. Until you file your Form ADV-W, you will remain subject to SEC regulation, and you also will be

subject to regulation in the *states* in which you register. See SEC rule 203A-1(b).

### 3. Item 3: Form of Organization

If you are a "separately identifiable department or division" (SID) of a bank, answer Item 3.A. by checking "other." In the space provided, specify that you are a "SID of" and indicate the form of organization of your bank. Answer Items 3.B. and 3.C. with information about your bank.

### 4. Item 4: Successions

**a. Succession of an SEC-Registered Adviser.** If you (1) have taken over the business of an investment adviser or (2) have changed your structure or legal status (*e.g.*, form of organization or state of incorporation), a new organization has been created, which has registration obligations under the Advisers Act. There are different ways to fulfill these obligations. You may rely on the registration provisions discussed in the General Instructions, or you may be able to rely on special registration provisions for "successors" to SEC-registered advisers, which may ease the transition to the successor adviser's registration.

To determine if you may rely on these provisions, review "Registration of Successors to Broker-Dealers and Investment Advisers," Investment Advisers Act Release No. 1357 (Dec. 28, 1992). If you have taken over an adviser, follow Part 1A Instruction 4.a(1), Succession by Application. If you have changed your structure or legal status, follow Part 1A Instruction 4.a(2), Succession by Amendment. If either (1) you are a "separately identifiable department or division" (SID) of a bank that is currently registered as an investment adviser, and you are taking over your bank's advisory business; or (2) you are a SID currently registered as an investment adviser, and your bank is taking over your advisory business, then follow Part 1A Instruction 4.a(1), Succession by Application.

(1) **Succession by Application.** If you are not registered with the SEC as an adviser, and you are acquiring or assuming substantially all of the assets and liabilities of the advisory business of an SEC-registered adviser, file a new application for registration on Form ADV. You will receive new registration numbers. You must file the new application within 30 days after the succession. On the application, make sure you check "yes" to Item 4 and complete Section 4 of Schedule D.

Until the SEC declares your new registration effective, you may rely on the registration of the adviser you are acquiring, but only if the adviser you are acquiring is no longer conducting advisory activities. Once your new registration is effective, a Form ADV-W must be filed with the SEC to withdraw the registration of the acquired adviser.

(2) **Succession by Amendment.** If you are a new investment adviser formed solely as a result of a change in form of organization, a reorganization, or a change in the composition of a partnership, and there has been no practical change in *control* or management, you may amend the registration of the registered investment adviser to reflect

these changes rather than file a new application. You will keep the same registration numbers, and you should not file a Form ADV-W. On your amendment, make sure you check "yes" to Item 4 and complete Section 4 of Schedule D. You must submit the amendment within 30 days after the change or reorganization.

**b. Succession of a State-Registered Adviser.** If you (1) have taken over the business of an investment adviser or (2) have changed your structure or legal status (e.g., form of organization or state of incorporation), a new organization has been created, which has registration obligations under state investment adviser laws. There may be different ways to fulfill these obligations. You should contact each state in which you are registered to determine that state's requirements for successor registration. See Form ADV General Instruction 15.

### 5. Item 5: Information About Your Advisory Business

**a. Newly-Formed Advisers:** Several questions in Item 5 that ask about your advisory business assume that you have been operating your advisory business for some time. Your response to these questions should reflect your current advisory business (i.e., at the time you file your Form ADV), with the following exceptions:

- Base your response to Item 5.E. on the types of compensation you expect to accept;
- Base your response to Item 5.G. on the types of advisory services you expect to provide during the next year; and
- Skip Item 5.H.

**b. Item 5.F: Calculating Your Assets Under Management.** In determining the amount of your assets under management, include the securities portfolios for which you provide continuous and regular supervisory or management services as of the date of filing this Form ADV.

(1) **Securities Portfolios.** An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purposes of this 50% test, you may treat cash and cash equivalents (i.e., bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities. You may include securities portfolios that are:

- (a) Your family or proprietary accounts (unless you are a sole proprietor, in which case your personal assets must be excluded);
- (b) Accounts for which you receive no compensation for your services; and
- (c) Accounts of *clients* who are not U.S. residents.

(2) **Value of Portfolio.** Include the entire value of each securities portfolio for which you provide continuous and regular supervisory or management services. If you provide continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only that portion of the securities portfolio for which you provide such services. Exclude, for example, the portion of an account:

- (a) Under management by another *person*;

or

(b) that consists of real estate or businesses whose operations you "manage" on behalf of a *client* but not as an investment.

Do not deduct securities purchased on margin.

### (3) Continuous and Regular Supervisory or Management Services.

**General Criteria.** You provide continuous and regular supervisory or management services with respect to an account if:

- (a) You have *discretionary authority* over and provide ongoing supervisory or management services with respect to the account; or
- (b) You do not have *discretionary authority* over the account, but you have ongoing responsibility to select or make recommendations, based upon the needs of the *client*, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the *client*, you are responsible for arranging or effecting the purchase or sale.

**Factors.** You should consider the following factors in evaluating whether you provide continuous and regular supervisory or management services to an account.

(a) **Terms of the advisory contract.** If you agree in an advisory contract to provide ongoing management services, this suggests that you provide these services for the account. Other provisions in the contract, or your actual management practices, however, may suggest otherwise.

(b) **Form of compensation.** If you are compensated based on the average value of the *client's* assets you manage over a specified period of time, that suggests that you provide continuous and regular supervisory or management services for the account. If you receive compensation in a manner similar to either of the following, that suggests you *do not* provide continuous and regular supervisory or management services for the account —

- (i) You are compensated based upon the time spent with a *client* during a *client* visit; or
- (ii) You are paid a retainer based on a percentage of assets covered by a financial plan.

(c) **Management practices.** The extent to which you actively manage assets or provide advice bears on whether the services you provide are continuous and regular supervisory or management services. The fact that you make infrequent trades (e.g., based on a "buy and hold" strategy) does not mean your services are not "continuous and regular."

**Examples.** You *may* provide continuous and regular supervisory or management services for an account if you:

- (a) Have *discretionary authority* to allocate *client* assets among various mutual funds;
- (b) Do not have discretionary authority, but provide the same allocation services, and satisfy the criteria set forth in Instruction 5.b(3);
- (c) Allocate assets among other managers (a "manager of managers"), and you have *discretionary authority* to hire and fire managers and reallocate assets among them; or
- (d) You are a broker-dealer, and treat the account as a brokerage account, but only if

you have *discretionary authority* over the account.

You *do not* provide continuous and regular supervisory or management services for an account if you:

- (a) Provide market timing recommendations (i.e., to buy or sell), but have no ongoing management responsibilities;
- (b) Provide only *impersonal investment advice* (e.g., market newsletters);
- (c) Make an initial asset allocation, without continuous and regular monitoring and reallocation; or
- (d) Provide advice on an intermittent or periodic basis (such as upon client request, in response to a market event, or on a specific date (e.g., the account is reviewed and adjusted quarterly)).

### (4) Value of Assets Under Management.

Determine your assets under management based on the current market value of the assets as determined within 90 days prior to the date of filing this Form ADV. Determine market value using the same method you used to report account values to *clients* or to calculate fees for investment advisory services.

(5) **Example.** This is an example of the method of determining whether a *client* account may be included as assets under management.

A *client's* portfolio consists of the following:

\$6,000,000	stocks and bonds
1,000,000	cash and cash equivalents
3,000,000	non-securities (collectibles, commodities, real estate, etc.)
10,000,000	Total Assets

### First, is the account a securities portfolio?

The account is a securities portfolio because securities as well as cash and cash equivalents (which you have chosen to include as securities) (\$6,000,000 + \$1,000,000 = \$7,000,000) comprise at least 50% of the value of the account (here, 70%). (See Instruction 5.b(1)).

**Second, does the account receive continuous and regular supervisory or management services?** The entire account is managed on a *discretionary* basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See Instruction 5.b(3)).

**Third, what is the entire value of the account?** The entire value of the account (\$10,000,000) is included in the calculation of the adviser's total assets under management.

### 6. Item 10: Control Persons

If you are a "separately identifiable department or division" (SID) of a bank, identify on Schedule A your bank's executive officers who are directly engaged in managing, directing, or supervising your investment advisory activities, and list any other *persons* designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities, including supervising employees performing investment advisory activities.

## Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

### Form ADV: Instructions for Part 1B

These instructions explain how to complete certain items in Part 1B of Form ADV.

#### 1. Item 2.B: Bond Information

Your *home state* may require you to maintain a bond. For example, a bond may be required if you have *custody* of or *discretionary authority* over your *client's* funds or securities. A bond also may be required if your *home state* requires you to maintain a minimum net worth and you do not have that net worth. For additional information concerning bond requirements, you should consult your *home state's* investment adviser laws or contact your *home state's* securities authority. See Form ADV General Instruction 15.

#### 2. Item 2.H: Financial Planning Services

Item 2.H. asks about financial planning services you have provided to your *clients*. This question assumes that you have been providing financial planning services for some time. Your response to this question should reflect your current advisory business (i.e., at the time you file your Form ADV). If you are a newly-formed adviser, skip Item 2.H.

#### 3. Item 2.I: Custody

Item 2.I. asks about practices that you engage in that may indicate whether you have *custody* of *client's* funds or securities. This question assumes that you have been operating your advisory business for some time. Your response to this question should reflect your current advisory business (i.e., at the time you file your Form ADV). If you are a newly-formed adviser, base your response to Item 2.I. on the way you expect to conduct your business during the next year.

### Glossary of Terms

1. **Advisory Affiliate:** Your advisory affiliates are (1) all of your officers, partners, or directors (or any *person* performing similar functions); (2) all *persons* directly or indirectly *controlling* or *controlled by* you; (3) all of your current employees (other than clerical or administrative employees); and (4) any *person* who solicits on your behalf.

If you are a "separately identifiable department or division" (SID) of a bank, your *advisory affiliates* are: (1) all of your bank's employees who perform your investment advisory activities (other than clerical or administrative employees); (2) all persons designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities (including supervising the employees who perform investment advisory activities); (3) all persons who directly or indirectly control your bank, and all persons whom you control in connection with your investment advisory activities; and (4) all other persons who directly manage any of your investment advisory activities (including directing, supervising or performing your advisory activities), all persons who directly or indirectly *control* those management

functions, and all persons whom you control in connection with those management functions. [Used in: Part 1A, Item 11] [Substantively the same as Part I, Item 11 of current Form ADV]

2. **Annual Updating Amendment:** Within 90 days after your firm's fiscal year end, your firm must file an "annual updating amendment," which is an amendment to your firm's Form ADV that reaffirms the eligibility information contained in Item 2 of Part 1A and updates the responses to any other item for which the information is no longer accurate. [Used in: General Instructions, Part 1A Instructions, Part 2A Instructions, Part 2B Instructions, Part 1A (introductory text)] [Derived from current rule 204-1, Schedule I to Form ADV]

3. **Brochure:** A written disclosure statement that your firm is required to provide to *clients* and prospective *clients*. See Advisers Act rule 204-3; Form ADV, Part 2A. [Used in: General Instructions, Part 1A Instructions, Part 2A Instructions, Part 2B Instructions; Used throughout Parts 2A, 2A Appendix 1, Part 2B] [Derived from rule 204-3(a)]

4. **Charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge). [Used in: Part 1A, Item 11; DRPs] [Same as the Instructions for Form BD, Item 4(3)]

5. **Client:** Any of your firm's investment advisory clients. This term includes clients from which your firm receives no compensation, such as members of your family. If your firm also provides other services (e.g., accounting services), this term does not include clients that are not investment advisory clients. [Used throughout Form ADV and Form ADV-W] [Derived from Item 5 of the Instructions to current Form ADV]

6. **Control:** Control means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

- Each of your firm's officers, partners, or directors exercising executive responsibility (or *persons* having similar status or functions) are presumed to control your firm.

- A *person* is presumed to control a corporation if the *person*: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

- A *person* is presumed to control a partnership if the *person* has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

- A *person* is presumed to control a limited liability company ("LLC") if the *person*: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC.

- A *person* is presumed to control a trust if the *person* is a trustee or *managing agent* of the trust.

[Used in: General Instructions, Part 1A Instructions; Part 1A, Items 2A, 7, 10, 11, 12;

Schedules A, B, C, D; Regulatory DRP] [Substantively the same as Advisers Act rule 0-7(b)(1), Item 5 of the Instructions to current Form ADV]

7. **Custody:** Your firm has custody if it directly or indirectly holds *client* funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. Your firm has custody, for example, if it has a general power of attorney over a *client's* account or signatory power over a *client's* checking account. See Advisers Act rule 206(4)-2. [Used in: Part 1A, Item 9; Part 1B Instructions; Part 2A, Items 14, 18] [Substantively the same as Item 5 of the Instructions to current Form ADV]

8. **Discretionary Authority:** Your firm has discretionary authority if it has the authority to decide which securities to purchase and sell for the *client*. Your firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the *client*. [Used in: Part 1A, Item 8; Part 2A, Items 15, 18; Part 2B Instructions] [Derived from section 3(a)(35) of the Securities Exchange Act of 1934 ("Exchange Act") (definition of "investment discretion")]

9. **Enjoined:** This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order. [Used in: Part 1A, Item 11; DRPs] [Same as Item 4(3) of the Instructions to Form BD]

10. **Felony:** For jurisdictions that do not differentiate between a felony and a *misdemeanor*, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least \$1,000. The term also includes a general court martial. [Used in: Part 1A, Item 11; Part 2A, Item 8; Part 2B, Item 3; DRPs] [Same as Item 4(3) of the Instructions to Form BD]

11. **Foreign Financial Regulatory Authority:** This term includes (1) a foreign securities authority; (2) another governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of investment-related activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above. [Used in: Part 1A, Items 1, 11; Part 2A, Item 8; Part 2B, Items 3 and 8; DRPs] [Substantively the same as Advisers Act section 202(a)(24)]

12. **Found:** This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters. [Used in: Part 1A, Item 11; Part 1B, Item 2; Part 2A, Items 8 and 20; Part 2B, Item 3] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)-4(d)(2)]

13. **Government Entity:** Any state or political subdivision of a state, including (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a plan or pool of assets controlled by the state or political subdivision or any agency, authority or instrumentality thereof; and (iii) any

officer, agent, or employee of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity. [Used in: Part 1A, Item 5D] [Same as proposed Advisers Act rule 206(4)-5(e)(3)]

**14. High Net Worth Individual:** An individual with at least \$750,000 managed by you, or whose net worth your firm reasonably believes exceeds \$1,500,000, or who is a "qualified purchaser" as defined in section 2(a)(51)(A) of the Investment Company Act of 1940. The net worth of an individual may include assets held jointly with his or her spouse. [Used in: Part 1A, Item 5D] [Substantively the same as Advisers Act rule 205-3(d)(1) (definition of "qualified client")]

**15. Home State:** If your firm is registered with a state securities authority, your firm's "home state" is the state where it maintains its **principal office and place of business**. [Used in: Part 1B] [Substantively the same as Advisers Act rule 203A-3(c) (definition of "principal office and place of business")]

**16. Impersonal Investment Advice:** Investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts. [Used in: Part 2A, Instructions; Part 2B, Instructions] [Substantively the same as Advisers Act rule 203A-3(a)(3)(ii)]

**17. Investment Adviser Representative:** Investment adviser representatives of SEC-registered advisers are subject to state registration in each state in which they have a **place of business**. Any of your firm's **supervised persons** (except those that provide only **impersonal investment advice**) is an investment adviser representative, if—

- the **supervised person** regularly solicits, meets with, or otherwise communicates with your firm's **clients**,
- the **supervised person** has more than five **clients** who are natural persons and not **high net worth individuals**, and
- more than ten percent of the **supervised person's** clients are natural persons and not **high net worth individuals**.

**Note:** If your firm is registered with the state securities authorities and not the SEC, your firm may be subject to a different state definition of "investment adviser representative."

[Used in: Part 2, General Instructions; Part 2A, Item 13] [Substantively the same as Advisers Act rule 203A-3(a); the IARD "help" function will include examples from Advisers Act Release No. 1733]<sup>1</sup>

**18. Investment-Related:** Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an investment adviser, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association). [Used in: Part 1A, Item 11; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8;

DRPs] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)-4(d)(3) and Part I, Item 11 of current Form ADV]

**19. Involved:** Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act. [Used in: Part 1A, Item 11; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)-4(d)(4) and Part I, Item 11 of current Form ADV]

**20. Management Persons:** Anyone with the power to exercise, directly or indirectly, a **controlling** influence over your firm's management or policies, or to determine the general investment advice given to the **clients** of your firm.

Generally, all of the following are management persons:

- Your firm's principal executive officers, such as your chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer; your directors, general partners, or trustees; and other individuals with similar status or performing similar functions;
- The members of your firm's investment committee or group that determines general investment advice to be given to clients; and
- If your firm does not have an investment committee or group, the individuals who determine general investment advice provided to clients (if there are more than five people, you may limit your firm's response to their supervisors).

[Used in: Part 1B, Item 2; Part 2A, Items 8, 9, 20] [Derived from Advisers Act rule 206(4)-4(d)(1)]

**21. Managing Agent:** A managing agent of an investment adviser is any **person**, including a trustee, who directs or manages (or who participates in directing or managing) the affairs of any unincorporated organization or association that is not a partnership. [Used in: Form ADV-NR] [Substantively the same as Advisers Act rule 0-2(d)(2)]

**22. Minor Rule Violation:** A violation of a **self-regulatory organization** rule that has been designated as "minor" pursuant to a plan approved by the SEC. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of \$2,500 or less, and if the sanctioned **person** does not contest the fine. (Check with the appropriate **self-regulatory organization** to determine if a particular rule violation has been designated as "minor" for these purposes.) [Used in: Part 1A, Item 11] [Same as Item 4(3) of the Instructions to Form BD]

**23. Misdemeanor:** For jurisdictions that do not differentiate between a **felony** and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than \$1,000. The term also includes a special court martial. [Used in: Part 1A, Item 11; DRPs; Part 2A, Item 8; Part 2B, Item 3] [Same as Item 4(3) of the Instructions to Form BD]

**24. NASDR CRD or CRD:** The Web Central Registration Depository ("CRD") system operated by the National Association of Securities Dealers Regulation, Inc.

("NASDR") for the registration of broker-dealers and broker-dealer representatives. [Used in: Part 1A, Item 1; Part 2A, Item 1; Part 2A Appendix 1, Item 1; Part 2B, Item 1; Form ADV-W, Item 1] [Derived from Exchange Act rule 15b1-1 (broker-dealer registration requirements) and rule 1140 of the Membership and Registration Rules of the NASD (electronic filing rules)]

**25. Non-Resident:** (a) an individual who resides in any place not subject to the jurisdiction of the United States; (b) a corporation incorporated in and having its **principal office and place of business** in any place not subject to the jurisdiction of the United States; and (c) a partnership or other unincorporated organization or association that has its **principal office and place of business** in any place not subject to the jurisdiction of the United States. [Used in: Execution Page(s); Form ADV-NR] [Substantively the same as Advisers Act rule 0-2(d)(3)]

**26. Notice Filing:** SEC-registered advisers may have to provide state securities authorities with copies of documents that are filed with the SEC. These filings are referred to as "notice filings." [Used in: Part 1A, Item 2; Part 2, General Instructions; Part 2A Appendix 1, Instructions; Execution Page(s); Form ADV-W] [Derived from Coordination Act section 307(a)]

**27. Order:** A written directive issued pursuant to statutory authority and procedures, including an order of denial, exemption, suspension, or revocation. Unless included in an order, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity or other restrictions. [Used in: Part 1A, Items 2 and 11; Part 2A, Item 8; Part 2B, Item 3; Schedule D; DRPs] [Same as Item 4(3) of the Instructions to Form BD]

**28. Performance-Based Fee:** An investment advisory fee based on a share of capital gains on, or capital appreciation of, **client** assets. A fee that is based upon a percentage of assets that you manage is not a performance-based fee. [Used in: Part 1A, Item 5; Part 2A, Item 20] [Derived from Advisers Act rule 205-3(a)]

**29. Person:** A natural person (an individual) or a company. A company includes any partnership, corporation, trust, limited liability company ("LLC"), limited liability partnership ("LLP"), or other organization. [Used throughout Form ADV and Form ADV-W] [Substantively the same as Advisers Act section 202(a)(16) (definition of "person"), section 202(a)(5) (definition of "company") and Item 5 of the Instructions to current Form ADV]

**30. Principal Place of Business or Principal Office and Place of Business:** Your firm's executive office from which your firm's officers, partners, or managers direct, control, and coordinate the activities of your firm. [Used in: Part 1A, Items 1 and 2; Schedule D; Form ADV-W, Item 1] [Substantively the same as Advisers Act rules 203A-3(c) and 222-1(b)]

**31. Proceeding:** This term includes a formal administrative or civil action initiated by a governmental agency, **self-regulatory organization** or **foreign financial regulatory authority**; a **felony** criminal indictment or information (or equivalent formal charge); or a **misdemeanor** criminal information (or

<sup>1</sup> Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers with Principal Offices and Places of Business in Colorado or Iowa, Investment Advisers Act Release No. 1733 (July 17, 1998) [63 FR 39708 (July 24, 1998)].

equivalent formal charge). This term does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

[Used in: Part 1A, Item 11; DRPs; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8] [Same as Item 4(3) of the Instructions to Form BD]

**32. Related Person:** Any *advisory affiliate* and any *person* that is under common *control* with your firm. [Used in: Part 1A, Items 7, 8, 9; Schedule D; Part 2A, Items 9, 10, 11, 13, 14; Form ADV-W, Item 3] [Substantively the same as Item 5 of the Instructions to current Form ADV]

**33. Self-Regulatory Organization or SRO:** Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago Board of Trade ("CBOT"), National Association of Securities Dealers, Inc. ("NASD") and New York Stock Exchange ("NYSE") are self-regulatory organizations. [Used in: Part 1A, Item 11; DRPs; Part 1B, Item 2; Part 2A, Items 8 and 20; Part 2B,

Items 3 and 8] [Substantively the same as Advisers Act rule 206(4)-4(d)(5) and Item 4(1) of the Instructions to Form BD]

**34. Sponsor:** A sponsor of a *wrap fee program* sponsors, organizes, or administers the program or selects, or provides advice to *clients* regarding the selection of, other investment advisers in the program. [Used in: Part 1A, Item 5; Schedule D; Part 2, General Instructions; Part 2A, Item 4; Part 2A Appendix 1, Instructions] [Derived from Advisers Act rule 204-3(f)(1)]

**35. State Securities Authority:** The securities commission (or any agency or office performing like functions) of any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States. [Used throughout Form ADV]; [Derived from Advisers Act section 202(a)(19) (definition of "State") and NSMIA section 307(a)]

**36. Supervised Person:** Any of your officers, partners, directors (or other *persons* occupying a similar status or performing similar functions), or employees, or any other

*person* who provides investment advice on your behalf and is subject to your supervision and control. [Used in: Part 2A, Item 5; Part 2B] [Substantively the same as Advisers Act section 202(a)(25)]

**37. Wrap Brochure:** The written disclosure statement that *sponsors* of *wrap fee programs* are required to provide to each of their *wrap fee program clients*. [Used in: Part 2, Instructions; Part 2A, Appendix 1] [Derived from Advisers Act rule 204-3(f)]

**38. Wrap Fee Program:** Any advisory program under which a specified fee or fees not based directly upon transactions in a *client's* account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of *client* transactions. [Used in: Part 1, Item 5; Schedule D; Part 2, Instructions; Part 2A, Item 4; Part 2A Appendix 1; Part 2B, Instructions] [Substantively the same as Advisers Act rule 204-3(g)(4)]

BILLING CODE 8010-01-P

# FORM ADV (Paper Version)

## UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

### PART 1A

**WARNING:** Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Check the box that indicates what you would like to do (check all that apply):

- Apply for registration as an investment adviser with the SEC.
- Apply for registration as an investment adviser with one or more states.
- Submit an *annual updating amendment* to your registration for your fiscal year ended \_\_\_\_\_.
- Submit an other-than-annual amendment to your registration.

### Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

\_\_\_\_\_

B. Name under which you primarily conduct your advisory business, if different from Item 1.A.

\_\_\_\_\_

*List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.*

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of  your legal name or  your primary business name:

\_\_\_\_\_

D. If you are registered with the SEC as an investment adviser, your SEC file number: 801-\_\_\_\_\_

E. If you have a number ("CRD Number") assigned by the NASD's CRD system or by the IARD system, your CRD number:

\_\_\_\_\_

*If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.*

**FORM ADV**

Part 1A

Page 2 of 16

Your Name \_\_\_\_\_ CRD Number \_\_\_\_\_  
Date \_\_\_\_\_ SEC 801-Number \_\_\_\_\_F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

\_\_\_\_\_  
(number and street)\_\_\_\_\_  
(city)\_\_\_\_\_  
(state/country)\_\_\_\_\_  
(zip+4/postal code)

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more states, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your *principal office and place of business*: Monday - Friday  Other: \_\_\_\_\_

Normal business hours at this location: \_\_\_\_\_

(3) Telephone number at this location: \_\_\_\_\_  
(area code) (telephone number)(4) Facsimile number at this location: \_\_\_\_\_  
(area code) (telephone number)G. Mailing address, if different from your *principal office and place of business* address:\_\_\_\_\_  
(number and street)\_\_\_\_\_  
(city)\_\_\_\_\_  
(state/country)\_\_\_\_\_  
(zip+4/postal code)H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:\_\_\_\_\_  
(number and street)\_\_\_\_\_  
(city)\_\_\_\_\_  
(state/country)\_\_\_\_\_  
(zip+4/postal code)

<b>FORM ADV</b> Part 1A Page 3 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

I. Do you have a World Wide Web site address? Yes  No

*If "yes," list all addresses on Section 1.I. of Schedule D. Do not provide individual electronic mail addresses in response to this Item.*

J. Contact Employee:

\_\_\_\_\_ (name)

\_\_\_\_\_ (title)

\_\_\_\_\_ (area code) (telephone number) \_\_\_\_\_ (area code) (facsimile number)

\_\_\_\_\_ (number and street)

\_\_\_\_\_ (city) \_\_\_\_\_ (state/country) \_\_\_\_\_ (zip+4/postal code)

\_\_\_\_\_ (electronic mail (e-mail) address, if contact employee has one)

*The contact employee should be an employee whom you have authorized to receive information and respond to questions about this Form ADV.*

K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your principal office and place of business? Yes  No

*If "yes," complete Section 1.K. of Schedule D.*

L. Are you registered with a foreign financial regulatory authority? Yes  No

*Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.L. of Schedule D.*

**FORM ADV**

Part 1A

Page 4 of 16

Your Name \_\_\_\_\_ CRD Number \_\_\_\_\_  
Date \_\_\_\_\_ SEC 801-Number \_\_\_\_\_**Item 2 SEC Registration**

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration.

- A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(10), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(11). You:

- (1) have *assets under management* of \$25 million (in U.S. dollars) or more;

*See Part 1A Instruction 2.a. to determine whether you should check this box.*

- (2) have your *principal office and place of business* in the U.S. Virgin Islands or Wyoming;

- (3) have your *principal office and place of business* outside the United States;

- (4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;

*See Part 1A Instruction 2.b. to determine whether you should check this box.*

- (5) have been designated as a nationally recognized statistical rating organization;

*See Part 1A Instruction 2.c. to determine whether you should check this box.*

- (6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

*See Part 1A Instruction 2.d. to determine whether you should check this box.*

- (7) are relying on rule 203A-2(c) because you are an investment adviser that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

*See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D).*

- (8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

*See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.*

<b>FORM ADV</b> Part 1A Page 5 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

(9) are a multi-state adviser relying on rule 203A-2(e);

*See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.*

(10) have received an SEC order exempting you from the prohibition against registration with the SEC;

*If you check this box, complete Section 2.A(10) of Schedule D.*

(11) are no longer eligible to remain registered with the SEC.

*See Part 1A Instruction 2.h. to determine whether you should check this box.*

B. Under state laws, SEC-registered advisers may be required to provide to state securities authorities a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check and circle the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, circle the unchecked box(es) next to those state(s).

- AL  CT  HI  KY  MN  NH  OH  SC  VA
- AK  DE  ID  LA  MS  NJ  OK  SD  WA
- AZ  DC  IL  ME  MO  NM  OR  TN  WV
- AR  FL  IN  MD  MT  NY  PA  TX  WI
- CA  GA  IA  MA  NE  NC  PR  UT
- CO  GU  KS  MI  NV  ND  RI  VT

*If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must filed before the end of the year (December 31).*

### Item 3 Form of Organization

A. How are you organized?

- Corporation  Sole Proprietorship  Limited Liability Partnership (LLP)
- Partnership  Limited Liability Company (LLC)
- Other (specify): \_\_\_\_\_

*If you are changing your response to this Item, see Part 1A Instruction 4.*

<b>FORM ADV</b> Part 1A Page 6 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

B. On the last day of what month does your fiscal year end each year? \_\_\_\_\_

C. Under the laws of what state or country are you organized? \_\_\_\_\_

*If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.*

*If you are changing your response to this Item, see Part 1A Instruction 4.*

#### Item 4 Successions

Are you, at the time of this filing, succeeding to the business of a registered investment adviser?

Yes       No

*If "yes," complete Section 4 of Schedule D.*

*If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, leave this Item blank. See Part 1A Instruction 4.*

#### Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

##### Employees and Independent Contractors

A. Approximately how many employees and independent contractors do you have? Include full and part-time employees and independent contractors but do not include any clerical workers.

1- 5     6 - 10     11 - 50     51-250     251-500     501-1,000     More than 1,000

If more than 1,000, how many? \_\_\_\_\_ (round to the nearest 100)

B. Approximately how many of these employees and independent contractors:

(1) perform investment advisory functions (including research)?

0     1-5     6-10     11 - 50     51-250     251-500     501-1,000

More than 1,000      If more than 1,000, how many? \_\_\_\_\_ (round to the nearest 100)

(2) are registered representatives of a broker-dealer?

0     1-5     6-10     11 - 50     51-250     251-500     501-1,000

More than 1,000      If more than 1,000, how many? \_\_\_\_\_ (round to the nearest 100)

<b>FORM ADV</b> Part 1A Page 7 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____
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(3) solicit advisory *clients*?

- 0     1-5     6-10     11 – 50     51-250     251-500     501-1,000  
 More than 1,000    If more than 1,000, how many? \_\_\_\_\_ (round to the nearest 100)

*If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A. and 5.B. If an employee or independent contractor performs more than one function, you should count that individual in each of your responses to the questions in Item 5.B.*

Clients

C. To approximately how many *clients* did you provide investment advisory services during your most-recently completed fiscal year?

- 0     1-10     11-25     26-100     101-250     251 – 500  
 More than 500    If more than 500, how many? \_\_\_\_\_ (round to the nearest 100)

D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

	Up to 10%	11-25%	26-50%	51-75%	More Than 75%
(1) Individuals (other than <i>high net worth individuals</i> )	<input type="checkbox"/>				
(2) <i>High net worth individuals</i>	<input type="checkbox"/>				
(3) Banking or thrift institutions	<input type="checkbox"/>				
(4) Investment companies (including mutual funds)	<input type="checkbox"/>				
(5) Pension and profit sharing plans (other than plan participants)	<input type="checkbox"/>				
(6) Other pooled investment vehicles (e.g., hedge funds)	<input type="checkbox"/>				
(7) Charitable organizations	<input type="checkbox"/>				
(8) Corporations or other businesses not listed above	<input type="checkbox"/>				
(9) State or municipal <i>government entities</i>	<input type="checkbox"/>				
(10) Other: _____	<input type="checkbox"/>				

*The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.*

*Do not check Item 5.D(4) or Item 5.G(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940.*

**FORM ADV**

Part 1A

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Your Name \_\_\_\_\_

Date \_\_\_\_\_

CRD Number \_\_\_\_\_

SEC 801-Number \_\_\_\_\_

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- (1) A percentage of assets under your management
- (2) Hourly charges
- (3) Subscription fees (for a newsletter or periodical)
- (4) Fixed fees (other than subscription fees)
- (5) Commissions
- (6) *Performance-based fees*
- (7) Other (specify): \_\_\_\_\_

Assets Under ManagementF. (1) Do you provide continuous and regular supervisory or management services to securities portfolios?  Yes  No

(2) If yes, what is the amount of your assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) \$ _____ .00	(d) _____
Non-Discretionary:	(b) \$ _____ .00	(e) _____
Total:	(c) \$ _____ .00	(f) _____

*Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.*

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- (1) Financial planning services
- (2) Portfolio management for individuals and/or small businesses
- (3) Portfolio management for investment companies
- (4) Portfolio management for businesses or institutional *clients* (other than investment companies)
- (5) Pension consulting services
- (6) Selection of other advisers
- (7) Publication of periodicals or newsletters
- (8) Security ratings or pricing services
- (9) Market timing services
- (10) Other (specify): \_\_\_\_\_

<b>FORM ADV</b> Part 1A Page 9 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

- 0     1-10     11-25     26-50     51-100     101-250     251 – 500  
 More than 500    If more than 500, how many? \_\_\_\_\_ (round to the nearest 100)

I. If you participate in a *wrap fee program*, do you (check all that apply):

- (1) *sponsor* the *wrap fee program*?  
 (2) act as a portfolio manager for the *wrap fee program*?

*If you are a portfolio manager for a wrap fee program, list the names of the programs and their sponsors in Section 5.I(2) of Schedule D.*

*If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check either Item 5.I(1) or 5.I(2).*

## Item 6 Other Business Activities

In this Item, we request information about your other business activities.

A. You are actively engaged in business as a (check all that apply):

- (1) Broker-dealer  
 (2) Registered representative of a broker-dealer  
 (3) Futures commission merchant, commodity pool operator, or commodity trading advisor  
 (4) Real estate broker, dealer, or agent  
 (5) Insurance broker or agent  
 (6) Bank (including a separately identifiable department or division of a bank)  
 (7) Other financial product salesperson (specify): \_\_\_\_\_

B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)?     Yes     No

(2) If yes, is this other business your primary business?     Yes     No  
*If "yes," describe this other business on Section 6.B. of Schedule D.*

(3) Do you sell products or provide services other than investment advice to your advisory *clients*?  
 Yes     No

<b>FORM ADV</b> Part 1A Page 10 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

## Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

Item 7 requires you to provide information about you and your *related persons*. Your *related persons* are: (1) all of your current employees (other than clerical or administrative employees); (2) all of your officers, partners, or directors (or any *person* performing similar functions); (3) all *persons* directly or indirectly *controlling* you, *controlled* by you, or under common *control* with you; and (4) any other *person* providing investment advice on your behalf.

A. You have a *related person* that is a (check all that apply):

- (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
- (2) investment company (including mutual funds)
- (3) other investment adviser (including financial planners)
- (4) futures commission merchant, commodity pool operator, or commodity trading advisor
- (5) banking or thrift institution
- (6) accountant or accounting firm
- (7) lawyer or law firm
- (8) insurance company or agency
- (9) pension consultant
- (10) real estate broker or dealer
- (11) sponsor or syndicator of limited partnerships

*If you checked Item 7.A(3), list on Section 7.A. of Schedule D all investment advisers with whom you are affiliated.*

B. Are you or any *related person* a general partner in a limited partnership?  Yes  No

*If "yes," for each limited partnership, complete Section 7.B. of Schedule D.*

## Item 8 Participation or Interest in Client Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your *clients*.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*.

FORM ADV Part 1A Page 11 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

### Proprietary Interest in *Client* Transactions

- | A. Do you or any <i>related person</i> :  | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| (1) buy securities for yourself from advisory <i>clients</i> , or sell securities you own to advisory <i>clients</i> (principal transactions)?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory <i>clients</i> ?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) recommend securities (or other investment products) to advisory <i>clients</i> in which you or any <i>related person</i> has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))? | <input type="checkbox"/> | <input type="checkbox"/> |

### Sales Interest in *Client* Transactions

- | B. Do you or any <i>related person</i> :   | <u>Yes</u>               | <u>No</u>                |
|--|--------------------------|--------------------------|
| (1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory <i>client</i> securities are sold to or bought from the brokerage customer (agency cross transactions)?        | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) recommend purchase of securities to advisory <i>clients</i> for which you or any <i>related person</i> serves as underwriter, general or managing partner, or purchaser representative?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) recommend purchase or sale of securities to advisory <i>clients</i> for which you or any <i>related person</i> has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? | <input type="checkbox"/> | <input type="checkbox"/> |

### Investment or Brokerage Discretion

- | C. Do you or any <i>related person</i> have <i>discretionary authority</i> to determine the:         | <u>Yes</u>               | <u>No</u>                |
|--|--------------------------|--------------------------|
| (1) securities to be bought or sold for a <i>client's</i> account?                                   | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) amount of securities to be bought or sold for a <i>client's</i> account?                         | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) broker or dealer to be used for a purchase or sale of securities for a <i>client's</i> account?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) commission rates to be paid to a broker or dealer for a <i>client's</i> securities transactions? | <input type="checkbox"/> | <input type="checkbox"/> |

<b>FORM ADV</b> Part 1A Page 12 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

- |   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| D. Do you or any <i>related person</i> recommend brokers or dealers to <i>clients</i> ?   | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Do you or any <i>related person</i> receive research or other products or services other than execution from a broker-dealer or a third party in connection with <i>client securities transactions</i> ? | <input type="checkbox"/> | <input type="checkbox"/> |
| F. Do you or any <i>related person</i> , directly or indirectly, compensate any <i>person</i> for <i>client referrals</i> ?   | <input type="checkbox"/> | <input type="checkbox"/> |

*In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.*

## Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets.

- |   |                          |                          |
|---|--------------------------|--------------------------|
| A. Do you have <i>custody</i> of any advisory <i>clients</i> ':   | <u>Yes</u>               | <u>No</u>                |
| (1) cash or bank accounts?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) securities?   | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Do any of your <i>related persons</i> have <i>custody</i> of any of your advisory <i>clients</i> ':  |                          |                          |
| (1) cash or bank accounts?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) securities?   | <input type="checkbox"/> | <input type="checkbox"/> |
| C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that <i>related person</i> a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934? | <input type="checkbox"/> | <input type="checkbox"/> |

## Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you.

If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies?      Yes      No

*If yes, complete Section 10 of Schedule D.*

<b>FORM ADV</b> Part 1A Page 13 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

**Item 11 Disciplinary Information**

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One disciplinary event may result in “yes” answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current employees (other than clerical or administrative employees); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you; and (4) any other *person* providing investment advice on your behalf. If you are a “separately identifiable department or division” (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

You must complete the appropriate Disclosure Reporting Page (“DRP”) for “yes” answers to the questions in this Item 11.

For “yes” answers to the following questions, complete a Criminal Action DRP:

- |   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| A. In the past ten years, have you or any <i>advisory affiliate</i> :   |                          |                          |
| (1) been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any <i>felony</i> ?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) been <i>charged</i> with any <i>felony</i> ?  | <input type="checkbox"/> | <input type="checkbox"/> |
| B. In the past ten years, have you or any <i>advisory affiliate</i> :   |                          |                          |
| (1) been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to a <i>misdemeanor</i> involving: investments or an <i>investment-related</i> business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) been <i>charged</i> with a <i>misdemeanor</i> listed in Item 11.B(1)?   | <input type="checkbox"/> | <input type="checkbox"/> |

For “yes” answers to the following questions, complete a Regulatory Action DRP:

- |  | <u>Yes</u>               | <u>No</u>                |
|--|--------------------------|--------------------------|
| C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:  |                          |                          |
| (1) <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of SEC or CFTC regulations or statutes?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) <i>found</i> you or any <i>advisory affiliate</i> to have been a cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted? | <input type="checkbox"/> | <input type="checkbox"/> |

<b>FORM ADV</b> Part 1A Page 14 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

- |   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| (4) entered an <i>order</i> against you or any <i>advisory affiliate</i> in connection with <i>investment-related</i> activity?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (5) imposed a civil money penalty on you or any <i>advisory affiliate</i> , or <i>ordered</i> you or any <i>advisory affiliate</i> to cease and desist from any activity?   | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Has any other federal regulatory agency, any state regulatory agency, or any <i>foreign financial regulatory authority</i> :   |                          |                          |
| (1) ever <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission, or been dishonest, unfair, or unethical?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) ever <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of <i>investment-related</i> regulations or statutes?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) ever <i>found</i> you or any <i>advisory affiliate</i> to have been a cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) in the past ten years, entered an <i>order</i> against you or any <i>advisory affiliate</i> in connection with an <i>investment-related</i> activity?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (5) ever denied, suspended, or revoked your or any <i>advisory affiliate's</i> registration or license, or otherwise prevented you or any <i>advisory affiliate</i> , by <i>order</i> , from associating with an <i>investment-related</i> business or restricted your or any <i>advisory affiliate's</i> activity? | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Has any <i>self-regulatory organization</i> or commodities exchange ever:  |                          |                          |
| (1) <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of its rules (other than a violation designated as a " <i>minor rule violation</i> " under a plan approved by the SEC)?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) <i>found</i> you or any <i>advisory affiliate</i> to have been the cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) disciplined you or any <i>advisory affiliate</i> by expelling or suspending you or the <i>advisory affiliate</i> from membership, barring or suspending you or the <i>advisory affiliate</i> from association with other members, or otherwise restricting your or the <i>advisory affiliate's</i> activities?  | <input type="checkbox"/> | <input type="checkbox"/> |

<b>FORM ADV</b> Part 1A Page 15 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

- |   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any <i>advisory affiliate</i> ever been revoked or suspended?                | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Are you or any <i>advisory affiliate</i> now the subject of any regulatory <i>proceeding</i> that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.? | <input type="checkbox"/> | <input type="checkbox"/> |

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

- |  | <u>Yes</u>               | <u>No</u>                |
|--|--------------------------|--------------------------|
| H. (1) Has any domestic or foreign court:  |                          |                          |
| (a) in the past ten years, <i>enjoined</i> you or any <i>advisory affiliate</i> in connection with any <i>investment-related</i> activity?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) ever <i>found</i> that you or any <i>advisory affiliate</i> were <i>involved</i> in a violation of <i>investment-related</i> statutes or regulations?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) ever dismissed, pursuant to a settlement agreement, an <i>investment-related</i> civil action brought against you or any <i>advisory affiliate</i> by a state or <i>foreign financial regulatory authority</i> ? | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) Are you or any <i>advisory affiliate</i> now the subject of any civil <i>proceeding</i> that could result in a "yes" answer to any part of Item 11.H(1)?   | <input type="checkbox"/> | <input type="checkbox"/> |

*If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.*

### Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than \$25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

<b>FORM ADV</b> Part 1A Page 16 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person*.

	<u>Yes</u>	<u>No</u>
A. Did you have total assets of \$5 million or more on the last day of your most recent fiscal year?	<input type="checkbox"/>	<input type="checkbox"/>

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

- |  |                          |                          |
|--|--------------------------|--------------------------|
| (1) control another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year?              | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) control another <i>person</i> (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? | <input type="checkbox"/> | <input type="checkbox"/> |

C. Are you:

- |   |                          |                          |
|---|--------------------------|--------------------------|
| (1) controlled by or under common control with another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year?              | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) controlled by or under common control with another <i>person</i> (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? | <input type="checkbox"/> | <input type="checkbox"/> |







<b>FORM ADV</b> <b>Schedule D</b> <b>Page 1 of 4</b>	Your Name: _____ SEC File No.: _____ Date: _____ CRD No.: _____
Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.	
This is an <input type="checkbox"/> INITIAL or <input type="checkbox"/> AMENDED Schedule D Page 1.	
<b>SECTION 1.B. Other Business Names</b> Check here if you are completing this section: <input type="checkbox"/>  List your other business names and the jurisdictions in which you use them. If you have more than two, complete an additional Schedule D Page 1. Name _____ Jurisdiction _____ Name _____ Jurisdiction _____	
<b>SECTION 1.F. Other Offices</b> Check here if you are completing this section: <input type="checkbox"/>  Complete the following information for each office, other than your <i>principal office and place of business</i> , at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of employees). Check only one box: <input type="checkbox"/> Add <input type="checkbox"/> Delete <input type="checkbox"/> Amend  _____ (number and street) _____ (city) (state/country) (zip +4/postal code)  Telephone Number at this location: _____ (area code) (telephone number) Facsimile Number at this location: _____ (area code) (telephone number)	
<b>SECTION 1.I. World Wide Web Site Addresses</b> Check here if you are completing this section: <input type="checkbox"/>  List your World Wide Web site addresses. If you have more than four, complete an additional Schedule D Page 1. 1. _____ 3. _____ 2. _____ 4. _____	
<b>SECTION 1.K. Location of Books and Records</b> Check here if you are completing this section: <input type="checkbox"/>  Complete the following information for each location at which you keep your books and records, other than your <i>principal office and place of business</i> . You must complete a separate Schedule D Page 1 for each location. Check only one box: <input type="checkbox"/> Add <input type="checkbox"/> Delete <input type="checkbox"/> Amend Name of entity where books and records are kept: _____ _____ (number and street) _____ (city) (state/country) (zip+4/postal code) _____ (area code) (telephone number) (area code) (facsimile number)  This is (check one): <input type="checkbox"/> one of your branch offices or affiliates. <input type="checkbox"/> a third-party unaffiliated recordkeeper. <input type="checkbox"/> other. Briefly describe the books and records kept at this location. _____ _____ _____	

**FORM ADV**  
**Schedule D**  
**Page 2 of 4**

Your Name: \_\_\_\_\_ SEC File No.: \_\_\_\_\_  
 Date: \_\_\_\_\_ CRD No.: \_\_\_\_\_

Use this Schedule D Page 2 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an  INITIAL or  AMENDED Schedule D Page 2.

**SECTION 1.L. Registration with Foreign Financial Regulatory Authorities**

Check here if you are completing this section:

List the name, in English, of each *foreign financial regulatory authority* and country with which you are registered. You must complete a separate Schedule D Page 2 for each *foreign financial regulatory authority* with whom you are registered.

English Name of *Foreign Financial Regulatory Authority* \_\_\_\_\_  
 Name of Country \_\_\_\_\_

**SECTION 2.A(7) Affiliated Adviser**

Check here if you are completing this section:

If you are relying on the exemption in rule 203A-2(c) from the prohibition on registration because you *control*, are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser \_\_\_\_\_  
 CRD Number of Registered Investment Adviser (if any) \_\_\_\_\_  
 SEC Number of Registered Investment Adviser 801- \_\_\_\_\_

**SECTION 2.A(8) Newly Formed Adviser**

Check here if you are completing this section:

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

- I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.
- I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

**SECTION 2.A(9) Multi-State Adviser**

Check here if you are completing this section:

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

- I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.
- I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

- Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

**FORM ADV**  
**Schedule D**  
**Page 3 of 4**

Your Name: \_\_\_\_\_ SEC File No.: \_\_\_\_\_  
 Date: \_\_\_\_\_ CRD No.: \_\_\_\_\_

Use this Schedule D Page 3 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an  INITIAL or  AMENDED Schedule D Page 3.

**SECTION 2.A(10) SEC Exemptive Order**

Check here if you are completing this section:

If you are relying upon an SEC order exempting you from the prohibition on registration, provide the following information:

Application Number: 803- \_\_\_\_\_ Date of order: \_\_\_\_\_  
 (mm/dd/yyyy)

**SECTION 4 Successions**

Check here if you are completing this section:

Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.

Date of Succession \_\_\_\_\_ Name of Acquired Firm \_\_\_\_\_  
 (mm/dd/yyyy)

Acquired Firm's SEC File No. (if any) 801- \_\_\_\_\_ Acquired Firm's CRD Number (if any) \_\_\_\_\_

**SECTION 5.I(2) Wrap Fee Programs**

Check here if you are completing this section:

If you are a portfolio manager for one or more wrap fee programs, list the name of each program and its sponsor. You must complete a separate Schedule D Page 3 for each wrap fee program for which you are a portfolio manager.

Name of Wrap Fee Program \_\_\_\_\_  
 Name of Sponsor \_\_\_\_\_

**SECTION 6.B. Description of Primary Business**

Check here if you are completing this section:

Describe your primary business (not your investment advisory business): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SECTION 7.A. Affiliated Advisers**

Check here if you are completing this section:

Complete the following information for each adviser with whom you are affiliated. If you are affiliated with more than two advisers, complete an additional Schedule D Page 3.

Legal Name of Affiliated Adviser: \_\_\_\_\_  
 Primary Business Name of Affiliated Adviser: \_\_\_\_\_  
 Affiliated Adviser's SEC File Number (if any) 801- \_\_\_\_\_ Affiliated Adviser's CRD Number (if any): \_\_\_\_\_

Legal Name of Affiliated Adviser: \_\_\_\_\_  
 Primary Business Name of Affiliated Adviser: \_\_\_\_\_  
 Affiliated Adviser's SEC File Number (if any) 801- \_\_\_\_\_ Affiliated Adviser's CRD Number (if any): \_\_\_\_\_

**FORM ADV**  
**Schedule D**  
**Page 4 of 4**

Your Name: \_\_\_\_\_ SEC File No.: \_\_\_\_\_  
Date: \_\_\_\_\_ CRD No.: \_\_\_\_\_

Use this Schedule D Page 4 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an  INITIAL or  AMENDED Schedule D Page 4.

**SECTION 7.B. Limited Partnership Participation**  
Check here if you are completing this section:

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner.

Name of Limited Partnership: \_\_\_\_\_  
Are your *clients* solicited to invest in the limited partnership?  yes  no  
Approximately what percentage of your *clients* have invested in this limited partnership? \_\_\_\_\_ %  
Cost per unit of limited partnership interests sold in your last fiscal year: \$ \_\_\_\_\_  
Total value of the limited partnership: \$ \_\_\_\_\_

**SECTION 10 Control Persons**  
Check here if you are completing this section:

You must complete a separate Schedule D Page 4 for each *control person* not named in Item I.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

Firm or Organization Name \_\_\_\_\_

CRD Number (if any) \_\_\_\_\_ Effective Date \_\_\_\_\_ Termination Date \_\_\_\_\_  
mm/dd/yyyy mm/dd/yyyy

Business Address: \_\_\_\_\_  
(number and street)  
\_\_\_\_\_  
(city) (state/country) (zip+4/postal code)

Individual Name (if applicable) (Last, First, Middle) \_\_\_\_\_

CRD Number (if any) \_\_\_\_\_ Effective Date \_\_\_\_\_ Termination Date \_\_\_\_\_  
mm/dd/yyyy mm/dd/yyyy

Business Address: \_\_\_\_\_  
(number and street)  
\_\_\_\_\_  
(city) (state/country) (zip+4/postal code)

Briefly describe the nature of the *control*: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CRIMINAL DISCLOSURE REPORTING PAGE (ADV)****GENERAL INSTRUCTIONS**

This Disclosure Reporting Page (DRP ADV) is an  INITIAL **OR**  AMENDED response used to report details for affirmative responses to Items 11.A. or 11.B. of Form ADV.

Check item(s) being responded to:  11.A(1)  11.A(2)  11.B(1)  11.B(2)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the items listed above.

**PART I**

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- You (the advisory firm)  
 You and one or more of your *advisory affiliates*  
 One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your <i>CRD</i> Number
-----------	------------------------

**ADV DRP - ADVISORY AFFILIATE**

<input type="checkbox"/> <i>CRD</i> Number	This <i>advisory affiliate</i> is <input type="checkbox"/> a firm <input type="checkbox"/> an individual
	Registered: <input type="checkbox"/> Yes <input type="checkbox"/> No

Name (For individuals, Last, First, Middle)
---

- This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.
- This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.

- Yes  No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

**CRIMINAL DISCLOSURE REPORTING PAGE (ADV)**  
**(continuation)**

**PART II**

1. If charge(s) were brought against an organization over which you or an *advisory affiliate* exercise(d) control: Enter organization name, whether or not the organization was an *investment-related* business and your or the *advisory affiliate's* position, title, or relationship.

\_\_\_\_\_

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

\_\_\_\_\_

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

A. Date First Charged (MM/DD/YYYY):   Exact  Explanation

If not exact, provide explanation: \_\_\_\_\_

B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: (1) number of counts, (2) *felony* or *misdemeanor*, (3) plea for each charge, and (4) product type if charge is *investment-related*).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Did any of the Charge(s) within the Event involve a *felony*?  Yes  No

D. Current status of the Event?  Pending  On Appeal  Final

E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY):

Exact Explanation

If not exact, provide explanation: \_\_\_\_\_

4. Disposition Disclosure Detail: Include for each charge (a) Disposition Type (e.g., convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc.), (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(continued)



**REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)**

<i>GENERAL INSTRUCTIONS</i>	
This Disclosure Reporting Page (DRP ADV) is an <input type="checkbox"/> INITIAL <b>OR</b> <input type="checkbox"/> AMENDED response used to report details for affirmative responses to Items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.	
Check item(s) being responded to:	<input type="checkbox"/> 11.C(1) <input type="checkbox"/> 11.C(2) <input type="checkbox"/> 11.C(3) <input type="checkbox"/> 11.C(4) <input type="checkbox"/> 11.C(5) <input type="checkbox"/> 11.D(1) <input type="checkbox"/> 11.D(2) <input type="checkbox"/> 11.D(3) <input type="checkbox"/> 11.D(4) <input type="checkbox"/> 11.D(5) <input type="checkbox"/> 11.E(1) <input type="checkbox"/> 11.E(2) <input type="checkbox"/> 11.E(3) <input type="checkbox"/> 11.E(4) <input type="checkbox"/> 11.F. <input type="checkbox"/> 11.G.
Use a separate DRP for each event or <i>proceeding</i> . The same event or <i>proceeding</i> may be reported for more than one <i>person</i> or entity using one DRP. File with a completed Execution Page.	
One event may result in more than one affirmative answer to Items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.	

<b>PART I</b>
---------------

The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- You (the advisory firm)
- You and one or more of your *advisory affiliates*
- One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a CRD number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your CRD Number
-----------	-----------------

ADV DRP - ADVISORY AFFILIATE

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">CRD Number</td> </tr> </table>	CRD Number	This <i>advisory affiliate</i> is <input type="checkbox"/> a firm <input type="checkbox"/> an individual Registered: <input type="checkbox"/> Yes <input type="checkbox"/> No
CRD Number		

Name (For individuals, Last, First, Middle)
---

- This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.
- This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

If you are registered or registering with a state, you may remove a DRP for an event you reported only in response to Item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

- C. If the *advisory affiliate* is registered through the IARD system or CRD system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or CRD for the event? If the answer is "Yes," no other information on this DRP must be provided.  
 Yes    No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or CRD records.

(continued)

**REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)**  
**(continuation)**

**PART II**

1. Regulatory Action initiated by:

- SEC    Other Federal    State    SRO    Foreign

(Full name of regulator, foreign financial regulatory authority, federal, state or SRO)

2. Principal Sanction (check appropriate item):

- |  |                                       |                                      |
|--|---------------------------------------|--------------------------------------|
| <input type="checkbox"/> Civil and Administrative Penalty(ies)/Fine(s) | <input type="checkbox"/> Disgorgement | <input type="checkbox"/> Restitution |
| <input type="checkbox"/> Bar   | <input type="checkbox"/> Expulsion    | <input type="checkbox"/> Revocation  |
| <input type="checkbox"/> Cease and Desist                              | <input type="checkbox"/> Injunction   | <input type="checkbox"/> Suspension  |
| <input type="checkbox"/> Censure                                       | <input type="checkbox"/> Prohibition  | <input type="checkbox"/> Undertaking |
| <input type="checkbox"/> Denial  | <input type="checkbox"/> Reprimand    | <input type="checkbox"/> Other _____ |

Other Sanctions:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Date Initiated (MM/DD/YYYY):

- Exact    Explanation

If not exact, provide explanation: \_\_\_\_\_

\_\_\_\_\_

4. Docket/Case Number:

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type (check appropriate item):

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Annuity(ies) - Fixed    | <input type="checkbox"/> Derivative(s)                               | <input type="checkbox"/> Investment Contract(s)   |
| <input type="checkbox"/> Annuity(ies) - Variable | <input type="checkbox"/> Direct Investment(s) - DPP & LP Interest(s) | <input type="checkbox"/> Money Market Fund(s)     |
| <input type="checkbox"/> CD(s)                   | <input type="checkbox"/> Equity - OTC                                | <input type="checkbox"/> Mutual Fund(s)           |
| <input type="checkbox"/> Commodity Option(s)     | <input type="checkbox"/> Equity Listed (Common & Preferred Stock)    | <input type="checkbox"/> No Product               |
| <input type="checkbox"/> Debt - Asset Backed     | <input type="checkbox"/> Futures - Commodity                         | <input type="checkbox"/> Options                  |
| <input type="checkbox"/> Debt - Corporate        | <input type="checkbox"/> Futures - Financial                         | <input type="checkbox"/> Penny Stock(s)           |
| <input type="checkbox"/> Debt - Government       | <input type="checkbox"/> Index Option(s)                             | <input type="checkbox"/> Unit Investment Trust(s) |
| <input type="checkbox"/> Debt - Municipal        | <input type="checkbox"/> Insurance                                   | <input type="checkbox"/> Other _____              |

Other Product Types:

\_\_\_\_\_

\_\_\_\_\_

(continued)

**REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)**  
**(continuation)**

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Current status?     Pending     On Appeal     Final

9. If on appeal, regulatory action appealed to (SEC, SRO, Federal or State Court) and Date Appeal Filed:

\_\_\_\_\_

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved (check appropriate item):

- Acceptance, Waiver & Consent (AWC)     Decision & Order of Offer of Settlement     Settled
- Consent     Dismissed     Stipulation and Consent
- Decision     Order     Vacated

11. Resolution Date (MM/DD/YYYY):      Exact     Explanation

If not exact, provide explanation: \_\_\_\_\_

12. Resolution Detail:

A. Were any of the following Sanctions Ordered (check all appropriate items)?

Monetary/Fine     Revocation/Expulsion/Denial     Disgorgement/Restitution

Amount: \$      Censure     Cease and Desist/Injunction     Bar     Suspension

B. Other Sanctions Ordered:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(continued)



## CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

### GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an  INITIAL **OR**  AMENDED response used to report details for affirmative responses to Item 11.H. of Part 1A and Item 2.F. of Part 1B of Form ADV.

Check Part 1A item(s) being responded to:  11.H(1)(a)  11.H(1)(b)  11.H(1)(c)  11.H(2)

Check Part 1B item(s) being responded to:  2.F(1)  2.F(2)  2.F(3)  2.F(4)  2.F(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11.H. of Part 1A or Item 2.F. of Part 1B. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

### PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- You (the advisory firm)
- You and one or more of your *advisory affiliates*
- One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your <i>CRD</i> Number
-----------	------------------------

#### ADV DRP - ADVISORY AFFILIATE

<div style="border: 1px solid black; padding: 2px;">CRD Number</div>	This <i>advisory affiliate</i> is <input type="checkbox"/> a firm <input type="checkbox"/> an individual Registered: <input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

Name (For individuals, Last, First, Middle)

- This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.
- This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

If you are registered or registering with a state, you may remove a DRP for an event you reported only in response to Item 11.H(1)(a), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

- D. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
- Yes  No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

**CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)**  
**(continuation)**

**PART II**

1. Court Action initiated by: (Name of regulator, foreign financial regulatory authority, SRO, commodities exchange, agency, firm, private plaintiff, etc.)

\_\_\_\_\_

2. Principal Relief Sought (check appropriate item):

- Cease and Desist       Disgorgement       Money Damages (Private/Civil Complaint)       Restraining Order  
 Civil Penalty(ies)/Fine(s)       Injunction       Restitution       Other \_\_\_\_\_

Other Relief Sought:

\_\_\_\_\_

3. Filing Date of Court Action (MM/DD/YYYY):        Exact       Explanation

If not exact, provide explanation: \_\_\_\_\_

4. Principal Product Type (check appropriate item):

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Annuity(ies) - Fixed    | <input type="checkbox"/> Derivative(s)                               | <input type="checkbox"/> Investment Contract(s)   |
| <input type="checkbox"/> Annuity(ies) - Variable | <input type="checkbox"/> Direct Investment(s) - DPP & LP Interest(s) | <input type="checkbox"/> Money Market Fund(s)     |
| <input type="checkbox"/> CD(s)                   | <input type="checkbox"/> Equity - OTC                                | <input type="checkbox"/> Mutual Fund(s)           |
| <input type="checkbox"/> Commodity Option(s)     | <input type="checkbox"/> Equity Listed (Common & Preferred Stock)    | <input type="checkbox"/> No Product               |
| <input type="checkbox"/> Debt - Asset Backed     | <input type="checkbox"/> Futures - Commodity                         | <input type="checkbox"/> Options                  |
| <input type="checkbox"/> Debt - Corporate        | <input type="checkbox"/> Futures - Financial                         | <input type="checkbox"/> Penny Stock(s)           |
| <input type="checkbox"/> Debt - Government       | <input type="checkbox"/> Index Option(s)                             | <input type="checkbox"/> Unit Investment Trust(s) |
| <input type="checkbox"/> Debt - Municipal        | <input type="checkbox"/> Insurance                                   | <input type="checkbox"/> Other _____              |

Other Product Types:

\_\_\_\_\_

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

\_\_\_\_\_

6. *Advisory Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

\_\_\_\_\_

(continued)

**CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)**  
**(continuation)**

7. Describe the allegations related to this civil action (your response must fit within the space provided):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Current status?     Pending     On Appeal     Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):

\_\_\_\_\_

10. If pending, date notice/process was served (MM/DD/YYYY):   Exact     Explanation

If not exact, provide explanation: \_\_\_\_\_

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

Consent                       Judgment Rendered                       Settled  
 Dismissed                       Opinion                       Withdrawn                       Other \_\_\_\_\_

12. Resolution Date (MM/DD/YYYY):   Exact     Explanation

If not exact, provide explanation: \_\_\_\_\_

13. Resolution Detail:

A. Were any of the following Sanctions Ordered or Relief Granted (check appropriate items)?

Monetary/Fine                       Revocation/Expulsion/Denial                       Disgorgement/Restitution

Amount: \$   Censure                       Cease and Desist/Injunction                       Bar     Suspension

B. Other Sanctions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(continued)



**FORM ADV (Paper Version)**  
**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

**PART 1B**

You must complete this Part 1B only if you are applying for registration, or are registered, as an investment adviser with any of the *state securities authorities*.

**Item 1 State Registration**

Complete this Item 1 if you are submitting an initial application for state registration or requesting additional state registration(s). Check the boxes next to the states to which you are submitting this application. If you are already registered with at least one state and are applying for registration with an additional state or states, check the boxes next to the states in which you are applying for registration. Do not check the boxes next to the states in which you are currently registered or where you have an application for registration pending.

- AL  CT  HI  KY  MN  NH  OH  SC  VA
- AK  DE  ID  LA  MS  NJ  OK  SD  WA
- AZ  DC  IL  ME  MO  NM  OR  TN  WV
- AR  FL  IN  MD  MT  NY  PA  TX  WI
- CA  GA  IA  MA  NE  NC  PR  UT
- CO  GU  KS  MI  NV  ND  RI  VT

**Item 2 Additional Information**

A. Person responsible for supervision and compliance:

\_\_\_\_\_ (name)

\_\_\_\_\_ (title)

\_\_\_\_\_ (area code) (telephone number) \_\_\_\_\_ (area code) (facsimile number)

\_\_\_\_\_ (number and street)

\_\_\_\_\_ (city) \_\_\_\_\_ (state/country) \_\_\_\_\_ (zip+4/postal code)

\_\_\_\_\_ (electronic mail (e-mail) address, if the person has one)

B. Bond Information, if required by your *home state*.

(1) Name of Issuing Insurance Company:

\_\_\_\_\_

(2) Amount of Bond: \$ \_\_\_\_\_ .00

(3) Bond Policy Number: \_\_\_\_\_

FORM ADV Part 1B Page 2 of 4	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

Yes      No

For "yes" answers to the following question, complete a Bond DRP:

- C. Has a bonding company ever denied, paid out on, or revoked a bond for you?  Yes       No

For "yes" answers to the following question, complete a Judgment/Lien DRP:

- D. Do you have any unsatisfied judgments or liens against you?  Yes       No

For "yes" answers to the following questions, complete an Arbitration DRP:

- E. Have you or any *advisory affiliate* been the subject of an arbitration claim alleging damages in excess of \$2,500, involving any of the following:

- (1) any investment or an *investment-related* business or activity?  Yes       No
- (2) fraud, false statement, or omission?  Yes       No
- (3) theft, embezzlement, or other wrongful taking of property?  Yes       No
- (4) bribery, forgery, counterfeiting, or extortion?  Yes       No
- (5) dishonest, unfair, or unethical practices?  Yes       No

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

- F. Have you, any *advisory affiliate*, or any *management person* been found liable in a civil, *self-regulatory organization*, or administrative *proceeding* involving any of the following:

- (1) an investment or *investment-related* business or activity?  Yes       No
- (2) fraud, false statement, or omission?  Yes       No
- (3) theft, embezzlement, or other wrongful taking of property?  Yes       No
- (4) bribery, forgery, counterfeiting, or extortion?  Yes       No
- (5) dishonest, unfair, or unethical practices?  Yes       No

G. Other Business Activities

- (1) You are actively engaged in business as a(n) (check all that apply):

- Attorney
- Certified public accountant
- Tax preparer

<b>FORM ADV</b> Part 1B Page 3 of 4	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

(2) If you are actively engaged in any business other than those listed in Item 6.A. of Part 1A or Item 2.G(1) of Part 1B, describe the business and the approximate amount of time spent on that business:

---

---

---

---

---

---

---

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H. If you provide financial planning services, the investments made based on those services at the end of your last fiscal year totaled:

	<u>Securities Investments</u>	<u>Non-Securities Investments</u>
Under \$100,000	<input type="checkbox"/>	<input type="checkbox"/>
\$100,001 to \$500,000	<input type="checkbox"/>	<input type="checkbox"/>
\$500,001 to \$1,000,000	<input type="checkbox"/>	<input type="checkbox"/>
\$1,000,001 to \$2,500,000	<input type="checkbox"/>	<input type="checkbox"/>
\$2,500,001 to \$5,000,000	<input type="checkbox"/>	<input type="checkbox"/>
More than \$5,000,000	<input type="checkbox"/>	<input type="checkbox"/>

If more than \$5,000,000, how much? \$ \_\_\_\_\_ (round to the nearest \$1,000,000)

I. *Custody*

	<u>Yes</u>	<u>No</u>
(1) Do you withdraw advisory fees directly from your <i>clients'</i> accounts?	<input type="checkbox"/>	<input type="checkbox"/>
(2) Do you act as a general partner for any partnership or trustee for any trust in which your advisory <i>clients</i> are either partners of the partnership or beneficiaries of the trust?	<input type="checkbox"/>	<input type="checkbox"/>

<b>FORM ADV</b> Part 1B Page 4 of 4	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

- |   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| (3) If you answered "yes" to Item 2.I(1) or 2.I(2), respond to the following:   |                          |                          |
| (a) Do you send a copy of your invoice to the custodian or trustee at the same time that you send a copy to the <i>client</i> ?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Do you send quarterly statements to your <i>clients</i> showing all disbursements for the custodian account, including the amount of the advisory fees?   | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Do your <i>clients</i> provide written authorization permitting you to be paid directly for their accounts held by the custodian or trustee?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) If you are the general partner of a partnership, have you engaged an attorney or an independent certified public accountant to provide authority permitting the direct payment or the transfer of funds or securities from the partnership account? | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) Do you require prepayment of fees of more than \$500 per <i>client</i> or for more than six months in advance?  | <input type="checkbox"/> | <input type="checkbox"/> |
| J. If you are organized as a sole proprietorship, please answer the following:  |                          |                          |
|   | <u>Yes</u>               | <u>No</u>                |
| (1) Have you passed the Series 65 examination or both the Series 66 and Series 7 examinations?  | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) (a) Do you have any investment advisory professional designations?  | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>If "no," you do not need to answer Item 2.J(2)(b).</i>   |                          |                          |
| (b) I have earned and I am in good standing with the organization that issued the following credential:   |                          |                          |
| <input type="checkbox"/> 1. Certified Financial Planner ("CFP")   |                          |                          |
| <input type="checkbox"/> 2. Chartered Financial Analyst ("CFA")   |                          |                          |
| <input type="checkbox"/> 3. Chartered Financial Consultant ("ChFC")   |                          |                          |
| <input type="checkbox"/> 4. Chartered Investment Counselor ("CIC")  |                          |                          |
| <input type="checkbox"/> 5. Personal Financial Specialist ("PFS")   |                          |                          |
| <input type="checkbox"/> 6. None of the above   |                          |                          |



**JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (ADV)**

**GENERAL INSTRUCTIONS**

This Disclosure Reporting Page (DRP ADV) is an  INITIAL **OR**  AMENDED response used to report details for affirmative responses to Item 2.D. of Part 1B of Form ADV.

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Your Name	Your CRD Number
-----------	-----------------

1. Judgment/Lien Amount:

2. Judgment/Lien Holder:

3. Judgment/Lien Type: (check appropriate item)

- Civil       Default       Tax

4. Date Filed (MM/DD/YYYY):

- Exact       Explanation

If not exact, provide explanation: \_\_\_\_\_  
 \_\_\_\_\_

5. Is Judgment/Lien outstanding?

- Yes       No

If no, provide status date (MM/DD/YYYY):

- Exact       Explanation

If not exact, provide explanation: \_\_\_\_\_  
 \_\_\_\_\_

If no, how was matter resolved? (check appropriate item)

- Discharged       Released       Removed       Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

7. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable) (your response must fit within the space provided):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**ARBITRATION DISCLOSURE REPORTING PAGE (ADV)**

<b>GENERAL INSTRUCTIONS</b>
<p>This Disclosure Reporting Page (DRP ADV) is an <input type="checkbox"/> INITIAL <b>OR</b> <input type="checkbox"/> AMENDED response used to report details for affirmative responses to Item 2.E. of Part 1B of Form ADV.</p> <p>Check Part 1B item(s) being responded to: <input type="checkbox"/> 2.E(1) <input type="checkbox"/> 2.E(2) <input type="checkbox"/> 2.E(3) <input type="checkbox"/> 2.E(4) <input type="checkbox"/> 2.E(5)</p> <p>Use a separate DRP for each event or <i>proceeding</i>. The same event or <i>proceeding</i> may be reported for more than one <i>person</i> or entity using one DRP. File with a completed Execution Page.</p> <p>One event may result in more than one affirmative answer to Item 2.E. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.</p>

<b>PART I</b>
---------------

- A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- You (the advisory firm)
  - You and one or more of your *advisory affiliates*
  - One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate checkbox.

Your Name	Your <i>CRD</i> Number
-----------	------------------------

ADV DRP - *ADVISORY AFFILIATE*

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">CRD Number</td> </tr> </table>	CRD Number	This <i>advisory affiliate</i> is <input type="checkbox"/> a firm <input type="checkbox"/> an individual Registered: <input type="checkbox"/> Yes <input type="checkbox"/> No
CRD Number		

Name (For individuals, Last, First, Middle)
---

- This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

<b>PART II</b>
----------------

1. Arbitration/Reparation Claim initiated by: (Name of private plaintiff, firm, etc.)

--

2. Principal Relief Sought (check appropriate item):

- Restraining Order
- Disgorgement
- Money Damages (Private/Civil Claim)
- Other \_\_\_\_\_
- Civil Penalty(ies)/Fine(s)
- Injunction
- Restitution

(continued)

**ARBITRATION DISCLOSURE REPORTING PAGE (ADV)**  
**(continuation)**

Other Relief Sought:

\_\_\_\_\_  
\_\_\_\_\_

3. Initiation Date of Arbitration/Reparation Claim (MM/DD/YYYY):

\_\_\_\_\_

- Exact       Explanation

If not exact, provide explanation: \_\_\_\_\_

4. Principal Product Type (check appropriate item):

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Annuity(ies) - Fixed    | <input type="checkbox"/> Derivative(s)                               | <input type="checkbox"/> Investment Contract(s)   |
| <input type="checkbox"/> Annuity(ies) - Variable | <input type="checkbox"/> Direct Investment(s) - DPP & LP Interest(s) | <input type="checkbox"/> Money Market Fund(s)     |
| <input type="checkbox"/> CD(s)                   | <input type="checkbox"/> Equity - OTC                                | <input type="checkbox"/> Mutual Fund(s)           |
| <input type="checkbox"/> Commodity Option(s)     | <input type="checkbox"/> Equity Listed (Common & Preferred Stock)    | <input type="checkbox"/> No Product               |
| <input type="checkbox"/> Debt - Asset Backed     | <input type="checkbox"/> Futures - Commodity                         | <input type="checkbox"/> Options                  |
| <input type="checkbox"/> Debt - Corporate        | <input type="checkbox"/> Futures - Financial                         | <input type="checkbox"/> Penny Stock(s)           |
| <input type="checkbox"/> Debt - Government       | <input type="checkbox"/> Index Option(s)                             | <input type="checkbox"/> Unit Investment Trust(s) |
| <input type="checkbox"/> Debt - Municipal        | <input type="checkbox"/> Insurance                                   | <input type="checkbox"/> Other _____              |

Other Product Types:

\_\_\_\_\_

5. Arbitration/Reparation Claim was filed with (NASD, AAA, NYSE, CBOE, CFTC, etc.) and Docket/Case Number:

\_\_\_\_\_

6. Advisory Affiliate Employing Firm when activity occurred which led to the arbitration/reparation (if applicable):

\_\_\_\_\_

7. Describe the allegations related to this arbitration/reparation (your response must fit within the space provided):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Current status?       Pending       On Appeal       Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):

\_\_\_\_\_  
\_\_\_\_\_

(continued)



## Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

### Part 2: Uniform Requirements for Investment Adviser Brochure and Supplements

#### General Instructions for Part 2 of Form ADV

Under SEC and similar state rules, you are required to deliver to *clients* and prospective *clients* a *brochure* disclosing material information about your firm and its business practices. You also may be required to deliver a *brochure* supplement disclosing material information about one or more of your *supervised persons*. Part 2 of Form ADV sets out the minimum required disclosures that your *brochure* (Part 2A for a firm *brochure*, or Appendix 1 for a *wrap fee program brochure*) and *brochure* supplements (Part 2B) must contain.

1. *Narrative Format.* Part 2 of Form ADV consists of a series of items that contain disclosure requirements for preparing your firm's *brochure* and any required supplements. The items require narrative responses. You do not have to provide the responses in the same order that the items appear, and you should not repeat the items themselves in the *brochure* or the supplements.

2. *Plain English.* The items in Part 2 of Form ADV are designed to promote effective communication between you and your *clients*. Write your *brochure* and supplements in plain English, taking into consideration your clients' level of financial sophistication. Your *brochure* should be concise and direct. In drafting your *brochure* and *brochure* supplements, you should: (a) use short sentences; (b) use definite, concrete, everyday words; (c) use active voice; (d) use tables or bullet lists for complex material, whenever possible; (e) avoid legal jargon or highly technical business terms unless you explain them or you believe your *clients* will understand them; and (f) avoid multiple negatives. Consider providing examples to illustrate a description of your practices or policies.

**Note:** The SEC's Office of Investor Education and Assistance has published A *Plain English Handbook*. You may find this handbook helpful in writing your *brochure* and supplements. You can get a copy of this handbook from the SEC's web site at [www.sec.gov/news/handbook.htm](http://www.sec.gov/news/handbook.htm), or by calling 1-800-SEC-0330.

3. *Full Disclosure of All Conflicts of Interest.* Under federal and state law, you are a fiduciary required to make full disclosure to your *clients* of all material facts regarding conflicts of interest between you and your *client*. You therefore may have to disclose to *clients* information not specifically required by Part 2 of Form ADV.

4. *Full and Truthful Disclosure.* All information in your *brochure* and *brochure* supplements must be true and complete. It is unlawful under federal and state law to make false statements or omit any material facts.

5. *Filing.* You must file your *brochure* with your regulators as part of your Form ADV. You will file your *brochure* with your Form ADV on the IARD system, starting when the

IARD system is capable of accepting these filings. Until then:

- If you are registered or registering with the SEC, you will preserve a copy of your *brochure* and make it available, upon request, to SEC staff—your *brochure* will be deemed filed with the SEC. See SEC rules 203-1, 204-1, and 204-2(a)(14). If you submit *notice filings* to states, the *state securities authorities* require you to send them paper copies of your *brochure* until the IARD system is capable of accepting these filings. You are not required to file your *brochure* supplements, but record-keeping rules require you to preserve a copy of the supplements and make them available to SEC staff. See SEC rule 204-2(a)(14).

- If you are registered or registering with one or more of the *state securities authorities*, you will file with the securities authority for each state in which you are registered or registering a paper copy of your *brochure* and a paper copy of the *brochure* supplement for each *supervised person* and each *investment adviser representative* doing business in that state.

#### Instructions for Part 2A of Form ADV: Preparing Your Firm Brochure

1. *To whom must we offer or deliver a firm brochure, and when?* You must give a firm brochure to each client before or at the time you enter into an advisory agreement with that client. You must deliver the brochure even if your advisory agreement with the client is oral. See SEC rule 204-3(b)(1) and similar state rules.

You must deliver or offer each client a free update of the brochure each year. If a client accepts your offer, you must send the brochure to the client within seven days after you are notified. See SEC rule 204-3(b)(2) and similar state rules.

For SEC-registered advisers: You are not required to deliver, or offer, your *brochure* to either (1) *clients* who receive only impersonal investment advice from you and will pay you less than \$500 per year or (2) *clients* that are SEC-registered investment companies (the *client* must be registered under the Investment Company Act of 1940, and the advisory contract must meet requirements of section 15(c) of that Act). See SEC rule 204-3(c).

**Note:** Even if you are not required to give a *brochure* to a *client*, you still have an affirmative obligation under the anti-fraud provisions of federal and state law to disclose to your *clients* all material facts regarding conflicts of interest between you and your *clients*, including all material disciplinary information.

2. *How should we offer and deliver our brochure and updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of an updated *brochure* must be in writing. You may offer and deliver your *brochure* using electronic media. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at [www.sec.gov/rules/concept/33-7288.txt](http://www.sec.gov/rules/concept/33-7288.txt).

3. *We advise limited partnerships, limited liability companies, and trusts. To whom must we offer or deliver our brochure?* It depends. If you are an SEC-registered

adviser, you should determine whether the "registered investment company exception" in instruction 1 applies. If it does not apply, and you are the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then you must treat each limited partner, member, or beneficial owner as a *client* for purposes of delivering your *brochure* and *brochure* supplements. You should treat a limited liability partnership or limited liability limited partnership as a limited partnership. See SEC rule 204-3(d).

4. *We are an SEC-registered adviser and we have determined that we have no clients to whom we must offer or deliver a brochure. Must we prepare one?* No.

5. *We offer several advisory services. May we prepare multiple firm brochures?* Yes. If you offer substantially different types of advisory services, you may opt to prepare separate *brochures* so long as each *client* receives all applicable information about services and fees. Each *brochure* may omit information that does not apply to the advisory services and fees it describes. For example, your firm *brochure* that describes one advisory service can omit the fee schedule for a different advisory service that is not discussed in the *brochure*.

6. *We sponsor a wrap fee program. Is there a different brochure we need to offer and deliver to our wrap fee clients?* Yes. If you sponsor a *wrap fee program*, you must offer and deliver a *wrap fee program brochure* to your *wrap fee clients*. The disclosure requirements for preparing a *wrap fee program brochure* (also called a *wrap brochure*) appear in Part 2A Appendix 1 of Form ADV. If your entire advisory business is *sponsoring wrap fee programs*, you do not need to prepare a firm *brochure* separate from your *wrap brochure(s)*. See SEC rule 204-3(e).

7. *May we include information not required by an item in our brochure?* Yes. If you include information not required by an item, however, you may not include so much additional information that the required information is obscured.

8. *What if information in our brochure changes?* If any information in your *brochure* becomes materially inaccurate, you must promptly amend your *brochure* by either revising and re-distributing your *brochure* or preparing a sticker to accompany the old *brochure*, as described below.

(a) *Filing the brochure amendment with regulators.*

- If you are registered with the SEC, you must preserve a copy of the revised *brochure* or the sticker, and make the revised *brochure* (and all stickers) available to SEC staff—your *brochure* and stickers will be deemed filed with the SEC. State laws require you to file paper copies of all *brochure* amendments with the *state securities authorities* to which you make *notice filings*.

- If you are registered with the *state securities authorities*, you must file all *brochure* amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to your *clients* promptly after the date of the

amendment. To deliver the new information, you can either revise and reprint your *brochure* or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only your revised *brochure* (or accompany your *brochure* with the stickers) to satisfy your *brochure* delivery requirements (rule 204-3). In addition, you must promptly deliver the sticker (or revised *brochure*) to all existing *clients*. You may use a sticker for any *brochure* amendment (except an *annual updating amendment*), so long as the *brochure* remains readable and clear.

**Note: We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file your firm brochure with the IARD.**

9. *Must we revise our brochure every year?* Yes. When you file the *annual updating amendment* to your Form ADV, you must include a revised *brochure*. You must also reprint this revised *brochure*, incorporating all current stickers into the *brochure* text.

10. *We are a new firm. Do we need a brochure?* Yes. Respond to items in Part 2A of Form ADV based on the advisory services you propose to provide and the policies and practices you propose to adopt.

11. *We are a "separately identifiable department or division" (SID) of a bank. Must our brochure discuss our bank's general business practices?* No. Information you include in your firm *brochure* (or in *brochure* supplements) should be information about you, the SID, and your business practices, rather than general information about your bank.

## Part 2A of Form ADV: Firm Brochure

### Item 1 Cover Page

A. The cover page of your *brochure* must state your name, business address, telephone number, and the date of the *brochure*.

**Note:** If you primarily conduct advisory business under a name different from your full legal name, and you have disclosed your business name in Item 1.B. of Part 1A of Form ADV, then you may use your business name throughout your *brochure*.

B. Display the following statements prominently on your cover page:

**This brochure provides information about the qualifications and business practices of [your name]. Please contact [name and/or title of contact person] if you have any questions about the contents of this brochure. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any State securities authority.**

**Additional information about [your name] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD number for [your name] is [your CRD number].**

C. If you refer to yourself as a "registered investment adviser" or describe yourself as being "registered," include a statement that registration does not imply a certain level of skill or training.

### Item 2 Material Changes

If your *brochure* contains material changes from its last annual update, summarize those changes. Include the summary on, or immediately following, the cover page of the *brochure* or in a separate letter accompanying the *brochure*. The summary must state clearly that it discusses only material changes since the last annual update of your *brochure*, and it must provide the date of the last annual update of your *brochure*.

**Note:** You do not have to provide the summary to a *client* or prospective *client* who has not received a previous version of your *brochure*.

### Item 3 Table of Contents

Provide a table of contents to your *brochure*.

**Note:** Your table of contents must be detailed enough so that your *clients* can locate topics easily.

### Item 4 Advisory Business

A. Describe your advisory firm, including how long you have been in business. Identify your principal owner(s).

**Note:** (1) For purposes of this item, your principal owners include the *persons* you list as owning 25% or more of your firm on Schedule A of Form ADV (Ownership Codes C, D or E). (2) If you are a publicly held company without a 25% shareholder, simply disclose that you are publicly held. (3) If an individual or company owns 25% or more of your firm through subsidiaries, you must identify the individual or parent company and intermediate subsidiaries. If you are a state-registered adviser, you must identify all intermediate subsidiaries. If you are a SEC-registered adviser, you must identify intermediate subsidiaries that are publicly held, but not other intermediate subsidiaries.

B. Describe the types of advisory services you offer. If you hold yourself out as specializing in a particular type of advisory service, such as financial planning or market timing, explain in detail the nature of that service. Similarly, if you provide investment advice only with respect to limited types of securities, explain the type of investment advice you offer, and disclose that your advice is limited to those types of investments.

C. Explain whether and how you tailor your advisory services to the individual needs of *clients*. Explain whether *clients* may impose restrictions on investing in certain securities or types of securities.

D. If you manage *client* assets, disclose the amount of assets you manage on a *discretionary* basis and the amount of assets you manage on a non-*discretionary* basis. Disclose the date "as of" which you calculated the amounts.

**Note:** In calculating the amount of *client* assets you manage in response to this Item, you do not have to use the method for computing assets under management that you used to respond to Item 5.F. in Part 1A. The amount you disclose may be rounded to the nearest \$100,000. Your "as of" date must not be more than three months before the date of your *brochure*. You do not need to amend your *brochure* between annual

updates solely to update the amounts of *client* assets you manage.

E. If you issue periodicals or periodic reports about securities, list the names of the periodicals and briefly describe their subject matter.

**Note:** You do not need to list or describe a report on an individually named security.

F. If you participate in *wrap fee programs* by providing portfolio management services, (1) disclose the programs offered and the names of the *sponsors*, (2) describe any differences between how you manage wrap fee accounts and how you manage other accounts, and (3) explain that you receive a portion of the wrap fee.

### Item 5 Fees and Compensation

A. Describe how you are compensated for your advisory services. Provide your fee schedule. Disclose whether the fees are negotiable.

B. Describe whether you deduct fees from *clients'* assets or bill *clients* for fees incurred. If *clients* may select either method, disclose this fact. Explain how often you bill *clients* or deduct your fees.

C. Describe any other types of fees or expenses *clients* may pay in connection with your advisory services, such as custodian fees or mutual fund expenses. Disclose the amount or range of these fees. Disclose that *clients* will incur brokerage and other transaction costs, and direct the reader to the section of your *brochure* discussing brokerage.

D. If your *clients* either may or must pay your fees in advance, disclose this fact. Explain how a *client* may obtain a refund of any pre-paid fee if the advisory contract is terminated before the end of the billing period. Explain how you will determine the amount of the refund.

E. If you or a *supervised person* accepts compensation for the sale of securities or other investment products, including distribution or service ("trail") fees from the sale of mutual funds, disclose this fact and respond to Items 5.E.1, 5.E.2., 5.E.3. and 5.E.4.

1. Explain that this practice presents a conflict of interest and gives you or the *supervised person* an incentive to recommend investment products based on the compensation received, rather than on the *client's* needs. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients*. If you recommend primarily mutual funds, disclose whether you will recommend "no-load" funds.

2. Explain that *clients* have the option to purchase investment products that you recommend through other brokers or agents that are not affiliated with you.

3. If more than 50% of your revenue from advisory *clients* results from commissions and other compensation for the sale of investment products you recommend to your *clients*, including trail fees from the sale of mutual funds, disclose that commissions provide your primary or, if applicable, your exclusive compensation.

4. If you charge advisory fees in addition to commissions, disclose whether you reduce

your advisory fees to offset the commissions you accept.

**Note:** If you receive commissions in connection with the purchase or sale of securities, you should carefully consider the applicability of the broker-dealer registration requirements of the Securities Exchange Act of 1934.

#### Item 6 Types of *Clients*

Describe the types of *clients* to whom you generally provide investment advice, such as individuals, trusts, investment companies, or pension plans. If you have any requirements to open or maintain an account, such as a minimum account size, disclose the requirements.

#### Item 7 Methods of Analysis, Investment Strategies and Risk of Loss

A. Describe the methods of analysis and investment strategies you use in formulating investment advice or managing assets. Explain that investing in securities involves risk of loss that *clients* should be prepared to bear.

B. If you primarily use a particular method of analysis or strategy, explain the specific risks involved. If the method of analysis or strategy involves significant or unusual risks, discuss these risks in detail. If your primary strategy involves frequent trading of securities, explain how frequent trading can affect investment performance, particularly through increased brokerage and other transaction costs and taxes.

C. If you recommend primarily a particular type of security, explain the specific risks involved. If the type of security involves significant or unusual risks, discuss these risks in detail.

D. Discuss your practices regarding cash balances in *client* accounts, including whether you invest cash balances for temporary purposes and, if so, how.

#### Item 8 Disciplinary Information

If there are legal or disciplinary events that are material to a *client's* or prospective *client's* evaluation of your advisory business and the integrity of your management, disclose all material facts regarding those events. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

If your advisory firm or a *management person* has been involved in an administrative *proceeding* before the SEC described in Item 8.B.2. below, then you must also deliver a copy of the SEC's *order* to your *clients* if the date of the *order* is on or after [effective date of new Form ADV]. You must deliver copies of the *order* as if it were a sticker to your *brochure* (that is, the order must accompany your *brochure* to prospective *clients*, and you must also deliver the *order* to existing *clients*), for one year following the date of the *order*.

Items 8.A., 8.B., and 8.C. list specific legal and disciplinary events that you must presume are material for this Item. If your advisory firm or a *management person* has been *involved* in one of these events, you must disclose it under this Item for ten years following the date of the event, unless (1) the event was resolved in your or the *management person's* favor, or was reversed,

suspended or vacated, or (2) the event is not material (see Note below). For purposes of calculating this ten-year period, the "date" of an event is the date the final *order*, judgment, or decree was entered, or the date any rights of appeal from preliminary *orders*, judgments or decrees lapsed.

Items 8.A., 8.B., and 8.C. are not an exclusive list. If your advisory firm or a *management person* has been *involved* in a legal or disciplinary event that is *not* listed in Items 8.A., 8.B., or 8.C. but *is* material to a *client's* or prospective *client's* evaluation of your advisory business or the integrity of its management, you must disclose the event. Similarly, even if more than ten years have passed since the date of the event, you must disclose the event if it is so serious that it remains currently material to the *client's* or prospective *client's* evaluation.

A. A criminal or civil action in a domestic, foreign or military court of competent jurisdiction in which your firm or a *management person*.

1. was convicted of, or pled guilty or nolo contendere ("no contest") to (a) any *felony*; (b) a *misdemeanor* that *involved* investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion; or (c) a conspiracy to commit any of these offenses;

2. is the named subject of a pending criminal *proceeding* that involves an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;

3. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation; or

4. was the subject of any *order*, judgment, or decree permanently or temporarily enjoining, or otherwise limiting, your firm or a *management person* from engaging in any *investment-related* activity, or from violating any *investment-related* statute, rule, or *order*.

B. An administrative *proceeding* before the SEC, any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority* in which your firm or a *management person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation and was the subject of an *order* by the agency or authority

(a) denying, suspending, or revoking the authorization of your firm or a *management person* to act in an *investment-related* business;

(b) barring or suspending your firm's or a *management person's* association with an *investment-related* business;

(c) otherwise significantly limiting your firm's or a *management person's* *investment-related* activities; or

(d) imposing a civil money penalty of more than \$2,500 on your firm or a *management person*.

C. A *self-regulatory organization (SRO)* *proceeding* in which your firm or a *management person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of the SRO's rules and was the subject of an *order* by the SRO barring or suspending your firm or a *management person* from membership or from association with other members, or expelling your firm or a *management person* from membership; otherwise significantly limiting your firm's or a *management person's* *investment-related* activities; or fining your firm or a *management person* more than \$2,500.

**Note:** Special circumstances may make an event immaterial (overcoming the materiality presumption). If an event is immaterial, you are not required to disclose it. Your determination, however, is not binding on any other *person*, including any regulator or court. When you review a legal or disciplinary event involving your firm or a *management person* for materiality, you should consider all of the following factors: (1) the proximity of the *person involved* in the disciplinary event to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. If you determine that the materiality presumption is overcome, you may be required to keep a file memorandum of your determination. See SEC rule 204-2(a)(14)(ii).

#### Item 9 Other Financial Industry Activities and Affiliations

A. If you or any of your *management persons* are registered, or have an application pending to register, as a broker-dealer or a registered representative of a broker-dealer, disclose this fact.

B. If you or any of your *management persons* are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, or a commodity trading advisor, disclose this fact.

C. Describe any material relationship or arrangement that you or any of your *management persons* have with any *related person* listed below. Identify the *related person* and, if the relationship or arrangement creates a material conflict of interest with *clients*, describe the nature of the conflict and the restrictions or internal procedures you use when there is a conflict of interest, including any procedures for disclosing these conflicts to *clients*.

1. broker-dealer, municipal securities dealer, or government securities dealer or broker.

2. investment company (including a mutual fund, closed-end investment company, unit investment trust, private investment company or "hedge fund," and offshore fund).

3. other investment adviser or financial planner.

4. futures commission merchant, commodity pool operator, or commodity trading advisor.

5. banking or thrift institution.

6. accountant or accounting firm.

7. lawyer or law firm.

8. insurance company or agency.

9. pension consultant.

10. real estate broker or dealer.  
11. sponsor or syndicator of limited partnerships.

12. securities exchange, securities association, or alternative trading system.

D. If you recommend or select other investment advisers for your *clients* and you receive compensation directly or indirectly from those advisers, or you have other business relationships with those advisers, describe these practices and discuss the conflicts of interest these practices create.

#### Item 10 Participation or Interest in *Client* Transactions and Personal Trading

A. If you or a *related person* recommends to *clients*, or buys or sells for *client* accounts, securities in which you or a *related person* has a material financial interest (excluding an interest as a shareholder of an SEC-registered, open-end investment company), describe your practice and discuss the conflicts of interest it presents. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients*. You do not need to repeat any information you provided in response to Item 5 of Part 2A.

Examples: (1) You or a *related person*, as principal, buys securities from (or sells securities to) your *clients*; (2) you or a *related person* acts as general partner in a partnership in which you solicit *client* investments; or (3) you or a *related person* acts as investment adviser to an investment company that you recommend to *clients*.

B. If you or a *related person* invests in the same securities (or related securities, e.g., warrants, options or futures) that you or a *related person* recommends to *clients*, discuss the conflicts of interest this presents and the restrictions or internal procedures you use when there is a conflict of interest in connection with personal trading, including your procedures for disclosing conflicts to *clients*.

C. If you or a *related person* recommends securities to *clients*, or buys or sells securities for *client* accounts, at or about the same time that you or a *related person* buys or sells the same securities for your own (or the *related person's* own) account, describe your practice and discuss the conflicts of interest it presents. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients*.

**Note:** If your firm has a code of ethics, some of the procedures you should discuss in response to Item 10 may be part of your code of ethics.

#### Item 11 Brokerage Practices

A. Describe your policies and practices in selecting or recommending broker-dealers for *client* transactions and determining the reasonableness of their compensation (e.g., commissions or spreads).

1. *Research and Other Soft Dollar Benefits.* If you receive research or other products or services other than execution (known as soft dollar benefits) from a broker-dealer or a third party in connection with *client* securities transactions, disclose your practices and discuss the conflicts of interest they create.

**Note:** Your disclosure and discussion must include all soft dollar benefits you receive, both proprietary (created or developed by the broker-dealer) and created or developed by a third party.

a. Explain that when you use *client* brokerage commissions to obtain research, products or services, you receive a benefit because you do not have to produce or pay for the research, products or services.

b. Disclose that you may have an incentive to select or recommend a broker-dealer based on your interest in receiving the research, products or services, rather than on your *clients'* interest in paying the lowest commission rate available.

c. If you may cause *clients* to pay commissions higher than those charged by other broker-dealers in return for soft dollar benefits (known as paying-up), disclose this fact.

d. Disclose whether you use soft dollar benefits to service all of your *clients'* accounts or only those that paid for the benefits. Disclose whether you seek to allocate soft dollar benefits to *client* accounts proportionately to the soft dollar credits the accounts generate.

e. Explain the procedures you used during your last fiscal year to direct *client* transactions to a particular broker-dealer in return for soft dollar benefits.

f. Describe the types of products and services you or any of your *related persons* acquired with *client* brokerage commissions within your last fiscal year.

**Note:** This description must be specific enough for your *clients* to understand the types of products or services you are acquiring and permit them to evaluate possible conflicts of interest. Your description must be more detailed for products or services that are not used in your investment decision-making process. Merely disclosing that you obtain various research reports and products is not specific enough.

2. *Brokerage for Client Referrals.* If you consider, in selecting or recommending broker-dealers, whether you or a *related person* receives *client* referrals from a broker-dealer or third party, disclose this practice and discuss the conflicts of interest it creates.

a. Disclose that you may have an incentive to select or recommend a broker-dealer based on your interest in receiving *client* referrals, rather than on your *clients'* interest in receiving the best execution services at the lowest rates available.

b. Explain any procedures you used during your last fiscal year to direct *client* transactions to a particular broker-dealer in return for *client* referrals.

#### 3. *Directed Brokerage.*

a. If you routinely *request* or *require* that a *client* direct you to execute transactions through a specified broker-dealer, describe your practice or policy. Explain that not all advisers require their *clients* to direct brokerage. If you and the broker-dealer are affiliates or have another economic relationship that creates a material conflict of interest, describe the relationship and discuss the conflicts of interest it presents. If you must respond to this Item, you must *also* respond to Item 11.A.3.b. of Part 2A.

b. If you *permit* a *client* to direct brokerage, describe your practices. Explain that you may be unable to achieve best execution of *client* transactions. Explain that directing brokerage may cost *clients* more money. For example, in a directed brokerage account, the *client* may pay higher brokerage commissions because you may not be able to negotiate lower commissions or aggregate orders to reduce transaction costs.

4. *Commission Recapture.* If you direct any *client* transactions to a broker-dealer that provides commission recapture benefits to your *client* based on the trades you place, explain how commission recapture works, describe the benefits of commission recapture and explain how a *client* can elect to participate in commission recapture.

**Note:** "Commission recapture" means a program that permits a *client*, rather than the adviser, to receive benefits (including cash rebates, products, services, and expense payments or reimbursements) from broker-dealers in connection with that *client's* securities transactions.

B. Discuss whether and under what conditions you negotiate brokerage commissions on behalf of *clients*. If you do not negotiate commissions, or if you limit the extent to which you negotiate commissions, explain that this may result in *clients* paying higher brokerage costs than they might otherwise pay.

C. Discuss whether and under what conditions you aggregate the purchase or sale of securities for various *client* accounts in quantities sufficient to obtain reduced transaction costs (known as bunching). If you do not bunch orders when you have the opportunity to do so, explain your practice and describe the costs to *clients* of not bunching.

#### Item 12 Review of Accounts

A. Indicate whether you periodically review *client* accounts or financial plans. If you do, describe the frequency and nature of the review, and the titles of the employees who conduct the review.

B. If you review *client* accounts on other than a periodic basis, describe the factors that trigger a review.

C. Describe the content and indicate the frequency of regular reports you provide to *clients* regarding their accounts. State whether these reports are written.

#### Item 13 Payment for Client Referrals

A. If someone who is not a *client* provides an economic benefit to you for providing investment advice or other advisory services to your *clients*, describe the arrangement. For purposes of this Item, economic benefits include any sales awards or other prizes. You do not need to repeat any information you provided in response to Item 5 of Part 2A.

B. If you or a *related person* directly or indirectly compensates any *person* who is not your employee for *client* referrals, describe the arrangement and the compensation.

**Note:** If you compensate any *person* for *client* referrals, you should consider whether rules regarding solicitation arrangements and/or state rules requiring registration of *investment adviser representatives* apply.

## Item 14 Custody

A. If you have *custody* of *client* funds or securities, disclose this fact. If you are not a bank, an insurance company, or a broker-dealer excepted from the requirements of rule 206(4)-2, disclose the additional risks that *clients* will face by having their assets in your *custody* instead of held by an independent custodian.

**Note:** You may be deemed to have *custody* of *client* funds or securities if a *related person* has *custody*. If so, your response to Item 14.A. should also identify the *related person* who has *custody*.

B. If you require *clients* to give you *custody* of their funds or securities, disclose that most advisers do not require this.

**Note:** You are not required to respond to Item 14.B. if you have *custody solely* because you (1) act as general partner for limited partnerships that you advise, (2) serve as trustee for your *client* accounts, or (3) deduct your advisory fees directly from your *clients'* accounts.

C. If you have *custody* over any *clients'* funds or securities, disclose what special reports, if any, you provide to those *clients*.

## Item 15 Investment Discretion

If you accept *discretionary authority* to manage securities accounts on behalf of *clients*, disclose this fact and describe any limitations *clients* may (or customarily do) place on this authority. Describe the procedures you follow before you assume this authority (e.g., execution of a power of attorney).

## Item 16 Proxy Voting Policies

A. If you have, or will accept, authority to exercise voting power with respect to *client* securities, disclose the policies, practices, and procedures you use to determine how to vote proxies. Describe whether (and if so, how) your *clients* can direct your vote in a particular proxy solicitation, and what procedures you use when there is a conflict between your interest and those of your *clients*. Explain whether (and, if so, how) *clients* can find out how you voted with respect to their securities in a particular proxy solicitation.

B. If you do not vote proxies with respect to *client* securities, disclose this fact. Explain whether *clients* will receive their proxies directly from their custodian or a transfer agent or from you, and discuss whether (and if so, how) *clients* can contact you with questions about a particular proxy solicitation.

## Item 17 Investment Performance

If you advertise or report the investment performance (such as the rate of return) of your managed accounts, securities recommendations, or model portfolios, describe any standards you use to calculate (or present) this performance, such as industry standards or standards used solely by you. Disclose whether any third party reviews this performance information to determine or verify its accuracy or its compliance with presentation standards; if so, name the *person* conducting the review and briefly describe the nature of the review.

## Item 18 Financial Information

A. If you have *custody* of *client* funds or securities, or you require or solicit prepayment of more than \$1,200 in fees per *client*, six months or more in advance, include a balance sheet for your most recent fiscal year.

1. The balance sheet must be prepared in accordance with generally accepted accounting principles, audited by an independent public accountant, and accompanied by a note stating the principles used to prepare it, the basis of securities included, and any other explanations required for clarity.

2. Show parenthetically the market or fair value of securities included at cost.

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of SEC Regulation S-X.

**Note:** If you are a sole proprietor, show investment advisory business assets and liabilities separate from other business and personal assets and liabilities. You may aggregate other business and personal assets unless advisory business liabilities exceed advisory business assets.

**Note:** If you are an SEC-registered adviser and you are a bank, an insurance company or a broker-dealer excepted from the requirements of SEC rule 206(4)-2, you do not need to provide a balance sheet.

**Note:** If you have not completed your first fiscal year, include a balance sheet dated not more than 90 days prior to the date of your *brochure*.

B. If you are an SEC-registered adviser and you have *discretionary authority* or *custody* of *client* funds or securities, or you require or solicit prepayment of more than \$1,200 in fees per *client*, six months or more in advance, disclose all of your financial conditions that are reasonably likely to impair your ability to meet contractual commitments to *clients*. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

C. If you have been the subject of a bankruptcy petition at any time during the past ten years, disclose that fact.

## Item 19 Index

The *brochure* you file with the SEC or *state securities authorities* must contain (or be accompanied by) an index of the items required by this Part 2A, indicating where in the *brochure* you address each item (e.g., Item 18, page 3). The *brochure* you provide to your *clients* does not need to include this index.

**If you are registering or registered with one or more state securities authorities, you must respond to the following additional Item.**

## Item 20 Requirements for State-Registered Advisers

A. Identify each of your principal executive officers and *management persons*, and describe their formal education and business background. If you have supplied this information elsewhere in your Form ADV, you do not need to repeat it in response to this Item.

B. Describe any business in which you are actively engaged (other than giving investment advice) and the approximate amount of time spent on that business. If you have supplied this information elsewhere in your Form ADV, you do not need to repeat it in response to this Item.

C. In addition to the description of your fees in response to Item 5 of Part 2A, if you or a *supervised person* are compensated for advisory services with *performance-based fees*, disclose this fact, and explain how this fee will be calculated. Disclose specifically that *performance-based compensation* may create an incentive for the adviser to recommend an investment that may carry a higher degree of risk to the *client*.

D. In addition to the events listed in Item 8 of Part 2A, if your advisory firm or a *management person* has been *involved* in one of the events listed below, disclose all material facts regarding the event.

1. an award or otherwise being *found* liable in an arbitration claim alleging damages in excess of \$2,500, *involving* any of the following:

- (a) an investment or an *investment-related* business or activity;
- (b) fraud, false statement(s), or omissions;
- (c) theft, embezzlement, or other wrongful taking of property;
- (d) bribery, forgery, counterfeiting, or extortion; or
- (e) dishonest, unfair, or unethical practices.

2. an award or otherwise being *found* liable in a civil, *self-regulatory* organization, or administrative *proceeding* *involving* any of the following:

- (a) an investment or an *investment-related* business or activity;
- (b) fraud, false statement(s), or omissions;
- (c) theft, embezzlement, or other wrongful taking of property;
- (d) bribery, forgery, counterfeiting, or extortion; or
- (e) dishonest, unfair, or unethical practices.

E. In addition to any relationship or arrangement described in response to Item 9.C. of Part 2A, describe any relationship or arrangement that you or any of your *management persons* have with any issuer of securities that is not listed in Item 9.C. of Part 2A.

F. Include a sample copy of each of your advisory contracts that you are currently using or that you have used during your most recently completed fiscal year.

G. If you have *discretionary authority* or *custody* of *client* funds or securities, or you require or solicit prepayment of more than \$500 in fees per *client*, six months or more in advance, disclose all of your financial conditions that are reasonably likely to impair your ability to meet contractual commitments to *clients*.

## Instructions for Part 2A Appendix 1 of Form ADV: Preparing Your Wrap Fee Program Brochure

1. *Who must deliver a wrap fee program brochure, and when?* If you *sponsor* a *wrap fee program*, you must give a *wrap brochure* to each *client* of the *wrap fee program* before or at the time the *client* enters into a *wrap fee program* contract. A *wrap brochure* takes

the place of your advisory firm *brochure* required by Part 2A of Form ADV, but only for *clients of wrap fee programs* that you *sponsor*. You must deliver or offer each *wrap fee program client* a free update of the *wrap brochure* each year. If a *client* accepts this offer, you must send the *wrap brochure* to the *client* within seven days after you are notified. See SEC rule 204-3(b) and (e).

2. *How should we offer and deliver our wrap fee program brochure and annual updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of an updated *wrap fee program brochure* must be in writing. You may deliver and offer your *wrap fee program brochure* using electronic media. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at [www.sec.gov/rules/concept/33-7288.txt](http://www.sec.gov/rules/concept/33-7288.txt).

3. *Must we also deliver brochure supplements to wrap fee program clients?* Yes. A *wrap brochure* does not take the place of any supplements required by Part 2B of Form ADV.

4. *What if we sponsor more than one wrap fee program?* You may prepare a single *wrap brochure* describing all the *wrap fee programs* you *sponsor*, or you may prepare separate *wrap brochures* that describe one or more of your *wrap fee programs*. If you prepare separate *brochures*, each *brochure* must state that you *sponsor* other *wrap fee programs* and must explain how the *client* can obtain *brochures* for the other programs.

5. *Our wrap fee program has multiple sponsors. Must each sponsor create and deliver or offer a separate wrap brochure?* No. If another *sponsor* creates, and delivers to your *wrap fee program clients*, a *wrap brochure* that includes all information required in your *wrap brochure*, you do not have to create and deliver or offer a separate *wrap brochure*. See SEC rule 204-3(e)(2).

6. *We provide portfolio management services under a wrap fee program that we sponsor. Must we deliver both our wrap brochure and our firm brochure to our wrap fee program clients?* No, just the *wrap brochure*. If you or your employees provide portfolio management services under a *wrap fee program* that you also *sponsor*, your *wrap brochure* must describe the investments and investment strategies you (or your employees) will use as portfolio managers. This requirement appears in Item 6.B. of this Appendix.

7. *We provide other advisory services outside of our wrap fee programs. May we combine our wrap brochure into our firm brochure for clients receiving these other services?* No. Your *wrap brochure* must address only the *wrap fee programs* you *sponsor*. See SEC rule 204-3(e)(1).

8. *What if information in a wrap brochure changes?* If any information in your *brochure* becomes materially inaccurate, you must promptly amend the *wrap brochure* by either revising and re-distributing the *wrap brochure* or preparing a sticker to accompany the old *wrap brochure*, as described below.

(a) *Filing the wrap brochure amendment with regulators.*

• If you are registered with the SEC, you must preserve a copy of the revised *wrap*

*brochure* or the sticker, and make the revised *wrap brochure* (and all stickers) available to SEC staff—your *wrap brochure* and stickers will be deemed filed with the SEC. State laws require you to file paper copies of all *wrap brochure* amendments with the *state securities authorities* to which you make *notice filings*.

• If you are registered with the *state securities authorities*, you must file all *wrap brochure* amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to your *clients*, promptly after the date of the amendment. To deliver the new information, you can either revise and reprint your *wrap brochure* or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only your revised *wrap brochure* (or accompany your *wrap brochure* with the stickers) to satisfy your *wrap brochure* delivery requirements (rule 204-3). In addition, you must promptly deliver the sticker (or revised *wrap brochure*) to all existing clients. You may use a sticker for any *wrap brochure* amendment (except an *annual updating amendment*), so long as the *wrap brochure* remains readable and clear.

**Note: We will notify you when the IARD begins to accept Part 2A (including Appendix 1), and you will have a grace period before you are required to file wrap fee program brochures with the IARD.**

9. *Must we revise our wrap brochure every year?* Yes. When you file the *annual updating amendment* to your Form ADV, you must include a revised *wrap brochure*. You must also reprint this revised *wrap brochure*, incorporating all current stickers into the *wrap brochure* text.

## Part 2A Appendix 1 of Form ADV: Wrap Fee Program Brochure

### Item 1 Cover Page

A. The cover page of your *wrap fee program brochure* must state your name, business address, telephone number, and the date of the *wrap brochure*.

**Note:** If you primarily conduct advisory business under a name different from your full legal name, and you have disclosed your business name in Item 1.B. of Part 1A of Form ADV, then you may use your business name throughout your *wrap brochure*.

B. Display the following statements prominently on your cover page:

**This brochure provides information that you should consider before becoming a client of the [name of program or programs]. Please contact [name and/or title of contact person] if you have any questions about the contents of this brochure. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any State securities authority.**

**Additional information about [your name] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD for [your name] is [your CRD number].**

### Item 2 Material Changes

If your *wrap brochure* contains material changes from its last annual update, summarize those changes. Include the summary on, or immediately following, the cover page of the *brochure* or in a separate letter accompanying the *brochure*. The summary must clearly state that it discusses only material changes since the last annual update of the *wrap brochure*, and must provide the date of the last annual update to the *wrap brochure*.

**Note:** You are not required to give the summary to a *client* or prospective *client* who has not received a previous version of your *wrap brochure*.

### Item 3 Table of Contents

Provide a table of contents to your *wrap brochure*.

**Note:** Your table of contents must be detailed enough so that your *clients* can locate topics easily.

### Item 4 Services, Fees and Compensation

A. Describe the services, including the types of portfolio management services, provided under each program. Indicate the wrap fee charged for each program or, if fees vary according to a schedule, provide your fee schedule. Indicate whether fees are negotiable and identify the portion of the total fee, or the range of fees, paid to portfolio managers.

B. Explain that the program may cost the *client* more or less than purchasing such services separately and describe the factors that bear upon the relative cost of the program, such as the cost of the services if provided separately and the trading activity in the *client's* account.

C. Describe any fees that the *client* may pay in addition to the wrap fee, and describe the circumstances under which *clients* may pay these fees, including, if applicable, mutual fund expenses and mark-ups, mark-downs, or spreads paid to market makers.

D. If the *person* recommending the *wrap fee program* to the *client* receives compensation as a result of the *client's* participation in the program, disclose this fact. Explain that the amount of this compensation may be more than what the *person* would receive if the *client* participated in your other programs or paid separately for investment advice, brokerage, and other services. Explain that the *person*, therefore, may have a financial incentive to recommend the *wrap fee program* over other programs or services.

### Item 5 Account Requirements and Types of Clients

If a *wrap fee program* imposes any requirements to open or maintain an account, such as a minimum account size, disclose these requirements. If there is a minimum amount for assets placed with each portfolio manager as well as a minimum account size for participation in the *wrap fee program*, disclose and explain these requirements. To the extent applicable to your *wrap fee program clients*, describe the types of *clients* to whom you generally provide investment advice, such as individuals, trusts, investment companies, or pension plans.

## Item 6 Portfolio Manager Selection and Evaluation

A. Describe how you select and review portfolio managers, your basis for recommending or selecting portfolio managers for particular *clients*, and your criteria for replacing or recommending the replacement of portfolio managers for the program and for particular *clients*.

1. Describe any standards you use to calculate portfolio manager performance, such as industry standards or standards used solely by you.

2. Indicate whether you review, or whether any third party reviews, performance information to determine or verify its accuracy or its compliance with presentation standards. If so, briefly describe the nature of the review and the name of any third party conducting the review.

3. If applicable, explain that neither you nor a third party reviews portfolio manager performance information, and/or that performance information may not be calculated on a uniform and consistent basis.

B. If you, or any of your employees covered under your investment adviser registration, acts as portfolio manager for a *wrap fee program* described in the *wrap brochure*, respond to Items 7.A. (Methods of Analysis, Investment Strategies and Risk of Loss) and 16 (Proxy Voting Policies) of Part 2A of Form ADV.

## Item 7 Client Information Provided to Portfolio Managers

Describe the information about *clients* that you communicate to the *clients'* portfolio managers, and how often or under what circumstances you provide updated information.

## Item 8 Client Contact with Portfolio Managers

Explain any restrictions placed on *clients'* ability to contact and consult with their portfolio managers.

## Item 9 Additional Information

A. Respond to Item 8 (Disciplinary Information) and Item 9 (Other Financial Industry Activities and Affiliations) of Part 2A of Form ADV.

B. Respond to Items 10 (Participation or Interest in *Client* Transactions and Personal Trading), 12 (Review of Accounts), 13 (Payment for *Client* Referrals), and 18 (Financial Information) of Part 2A of Form ADV, as applicable to your *wrap fee clients*.

## Item 10 Index

The *wrap brochure* you file with the SEC or *state securities authorities* must contain (or be accompanied by) an index of the items required by this Appendix, indicating where in the *wrap brochure* you address each item. The *wrap brochure* you provide to your *clients* does not need to include this index.

**If you are registering or registered with one or more state securities authorities, you must respond to the following additional Item.**

## Item 11 Requirements for State-Registered Advisers

Respond to Items 20.D. and 20.F. of Part 2A of Form ADV.

## Part 2B of Form ADV: Instructions for Preparing a Brochure Supplement

1. *For which supervised persons must we prepare a brochure supplement?* Generally, you must prepare a *brochure supplement* for each *supervised person* who will provide advisory services to *clients*. You should begin, however, by determining whether you are required to deliver or offer the *brochure supplement* for a particular *supervised person* to any *client*. If you have no *client* to whom you must deliver or offer the *brochure supplement* for a particular *supervised person*, then that *supervised person* does not need a supplement.

As a general rule:

- You must prepare a supplement for each *supervised person* who on a regular basis communicates investment advice to a *client*.

- You must also prepare a supplement for each *supervised person* who formulates advice for a *client* even if the *supervised person* has no *client* contact. However, you do not have to prepare a supplement for a *supervised person* who has no *client* contact and determines investment advice only as part of a committee.

- If your firm has *discretionary authority* over *client* assets, you must also prepare a supplement for each *supervised person* who makes *discretionary* investment decisions for *client* assets even if the *supervised person* has no *client* contact.

2. *To whom must we offer or deliver supplements, and when?* First, determine whether you are required to deliver a firm *brochure* (or *wrap fee program brochure*) to your *client*; if not, then you are not required to deliver any *brochure* supplements to that *client*, either. See SEC rule 204-3(c).

If you are required to deliver a firm *brochure* (or *wrap brochure*) to a *client*, however, then you must also give that *client* the *brochure supplement* for a *supervised person* before or at the time the *supervised person* begins to provide advisory services to that *client*. You must deliver or offer a free update of the supplement each year. If a *client* accepts this offer, you must send the supplement to the *client* within seven days after you are notified. See SEC rule 204-3(b).

A *supervised person* will provide advisory services to a *client* if he or she (a) will regularly communicate investment advice to that *client*, (b) will formulate investment advice for assets of that *client*, or (c) will make discretionary investment decisions for assets of that *client*. See SEC rule 204-3(b)(1)(B). You may have a *supervised person* deliver his or her own supplement on your behalf, but your firm remains responsible for seeing that the delivery is made.

3. *How should we offer and deliver supplements and updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of updated supplements must be in writing. You may deliver and offer supplements using *electronic media*. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at [www.sec.gov/rules/concept/33-7288.txt](http://www.sec.gov/rules/concept/33-7288.txt).

4. *Some of our clients receive only impersonal investment advice from us. Must we deliver or offer supplements to them?* No. You are not required to deliver a *brochure*

supplement to *clients* who receive only *impersonal investment advice* from you. See SEC rule 204-3(c)(2).

5. *Must brochure supplements be separate documents?* No. If your firm *brochure* includes all the information required in a *brochure supplement*, you do not need a separate supplement. Smaller firms with just a few *supervised persons* may find it easier to include all supplement information in their firm *brochure*, while larger firms may prefer to use a firm *brochure* and separate supplements.

If your firm *brochure* includes some (but not all) supplement information about a *supervised person*, the supplement can refer the reader to the appropriate section(s) of your firm *brochure* instead of repeating the information.

You may prepare supplements for groups of *supervised persons*. A group supplement, or a firm *brochure* presenting supplement information about *supervised persons*, must present information in a separate section for each *supervised person*.

6. *May we include information not required by an item in our brochure?* Yes. If you include information not required by an item, however, you may not include so much additional information that the required information is obscured.

7. *What if information in a brochure supplement changes?* If any information in a *brochure supplement* becomes materially inaccurate, you must promptly amend the supplement by either revising and re-distributing the supplement or preparing a sticker to accompany the old supplement, as described below.

(a) *Filing the supplement amendment with regulators.*

- If you are registered with the SEC, you are not required to file the revised supplement or sticker. However, record-keeping rules require you to preserve a copy of the revised supplement or the sticker, and make the revised supplement (and all stickers) available to SEC staff.

- If you are registered with the *state securities authorities*, you must file all supplement amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to all *clients* for whom the *supervised person* provides advisory services, promptly after the date of the amendment. To deliver the new information, you can either revise and reprint the supplement or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only the revised supplement (or accompany the old supplement with the stickers) to satisfy your *brochure* and supplement delivery requirements (rule 204-3). In addition, you must promptly deliver the sticker (or revised supplement) to all existing *clients* for whom the *supervised person* provides advisory services. You may use a sticker for any *brochure* amendment (except an *annual updating amendment*), so long as the *brochure* remains readable and clear.

8. *Must we revise a supplement every year?* Yes. When you make your *annual updating*

*amendment* to your Form ADV, you must revise your *brochure* supplements and reprint them, incorporating all current stickers into the text.

## Part 2B of Form ADV: Brochure Supplement

### Item 1 Cover Page

A. Include the following on the cover page of the supplement.

1. The *supervised person's* name, business address and telephone number (if different from yours).

2. Your firm's name, business address and telephone number. If your firm *brochure* uses a business name for your firm, use the same business name for the firm in the supplement.

3. The date of the supplement.

B. Display the following statements prominently on the cover page of the supplement:

**This supplement provides information about [name of supervised person] that supplements the [name of advisory firm] brochure. You should have received a copy of that brochure. Please contact [name and/ or title of your contact person] if you did not receive [name of advisory firm]'s brochure or if you have any questions about the contents of this supplement.**

**Additional information about [name of supervised person] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD number for [name of supervised person] is [supervised person's CRD number].**

### Item 2 Educational Background and Business Experience

Disclose the *supervised person's* name, age (or year of birth), formal education after high school, professional designations or attainments, and business background for the preceding five years. If the *supervised person* either has no formal education after high school or has no business background, disclose this fact.

### Item 3 Disciplinary Information

If there are legal or disciplinary events material to a *client's* or prospective *client's* evaluation of the *supervised person's* integrity, disclose all material facts regarding those events. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

Items 3.A., 3.B., 3.C., and 3.D. below list specific legal and disciplinary events that you must presume are material for this Item. If the *supervised person* has been *involved* in one of these events, you must disclose it under this Item for ten years following the date of the event, unless (1) the event was resolved in the *supervised person's* favor, or was reversed, suspended or vacated, or (2) the event is not material (see Note below). For purposes of calculating this ten-year period, the "date" of an event is the date the final *order*, judgment, or decree was entered, or the date any rights of appeal from preliminary *orders*, judgments or decrees lapsed.

Items 3.A., 3.B., 3.C., and 3.D. are not an exclusive list. If the *supervised person* has been *involved* in a legal or disciplinary event that is *not* listed in Items 3.A., 3.B., 3.C., or

3.D. but *is* material to a *client's* or prospective *client's* evaluation of the *supervised person's* integrity, you must disclose the event.

A. A criminal or civil action in a domestic, foreign or military court of competent jurisdiction in which the *supervised person*.

1. was convicted of, or pled guilty or nolo contendere ("no contest") to (a) any *felony*; (b) a  *misdemeanor* that *involved* investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion; or (c) a conspiracy to commit any of these offenses;

2. is the named subject of a pending criminal *proceeding* that involves an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;

3. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation; or

4. was the subject of any *order*, judgment, or decree permanently or temporarily enjoining, or otherwise limiting, the *supervised person* from engaging in any *investment-related* activity, or from violating any *investment-related* statute, rule, or *order*.

B. An administrative *proceeding* before the SEC, any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority* in which the *supervised person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation and was the subject of an *order* by the agency or authority

(a) denying, suspending, or revoking the authorization of the *supervised person* to act in an *investment-related* business;

(b) barring or suspending the *supervised person's* association with an *investment-related* business;

(c) otherwise significantly limiting the *supervised person's investment-related* activities; or

(d) imposing a civil money penalty of more than \$2,500 on the *supervised person*.

C. A *self-regulatory organization* (SRO) *proceeding* in which the *supervised person*

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of the SRO's rules and was the subject of an *order* by the SRO barring or suspending the *supervised person* from membership or from association with other members, or expelling the *supervised person* from membership; otherwise significantly limiting the *supervised person's investment-related* activities; or fining the *supervised person* more than \$2,500.

D. Any other *proceeding* revoking or suspending a professional attainment, designation, or license of the *supervised person*.

**Note:** Special circumstances may make an event immaterial (overcoming the materiality presumption). If an event is immaterial, you

are not required to disclose it. Your determination, however, is not binding on any other *person*, including any regulator or court. When you review a legal or disciplinary event involving the *supervised person* for materiality, you should consider all of the following factors: (1) the proximity of the *supervised person* to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. If you determine that the materiality presumption is overcome, you may be required to keep a file memorandum of your determination. See SEC rule 204-2(a)(14)(ii).

### Item 4 Other Business Activities

A. If the *supervised person* is registered, or has an application pending to register, as a broker-dealer, registered representative of a broker-dealer, futures commission merchant, commodity pool operator, or commodity trading advisor, disclose this fact and describe the business relationship, if any, between the advisory business and the other business.

1. If a relationship between the advisory business and the *supervised person's* other financial industry activities creates a material conflict of interest with *clients*, describe the nature of the conflict and any restrictions or internal procedures that you use when there is a conflict of interest, including your procedures for disclosing conflicts to *clients*.

2. If the *supervised person* receives commissions, bonuses or other compensation based on the sale of securities or other investment products, including as a broker-dealer or registered representative, and including distribution or service ("trail") fees from the sale of mutual funds, disclose this fact. If this compensation is not cash, explain what type of compensation the *supervised person* receives. Explain that this practice gives the *supervised person* an incentive to recommend investment products based on the compensation received, rather than on the *client's* needs.

B. If the *supervised person* is actively engaged in any business or occupation for compensation not discussed in response to Item 4.A, above, disclose this fact and describe the nature of that business. If the other business activity or activities provide the primary source of the *supervised person's* income, also disclose this fact.

### Item 5 Additional Compensation

If someone who is not a *client* provides an economic benefit to the *supervised person* for providing advisory services, describe the arrangement. For purposes of this Item, economic benefits include sales awards and other prizes, but do *not* include the *supervised person's* regular salary. Any bonus that is based, at least in part, on the number or amount of sales, *client* referrals, or new accounts should be considered an economic benefit, but other regular bonuses should not.

### Item 6 Investment Advice and Supervision

Disclose the extent to which the *supervised person* or other *persons* or groups in your firm formulate the investment advice the *supervised person* gives to *clients*. If the

*supervised person* formulates this investment advice, explain how you supervise the *supervised person*, including how you monitor the advice the *supervised person* provides.

Provide the name, title and telephone number of the *person* responsible for supervising the *supervised person's* advisory activities on behalf of your firm.

#### Item 7 Financial Information

If the *supervised person* has been the subject of a bankruptcy petition at any time during the past ten years, disclose that fact.

**If you are registering or registered with one or more state securities authorities, you must respond to the following additional Item.**

#### Item 8 Requirements for State-Registered Advisers

A. In addition to the events listed in Item 3 of Part 2B, if the *supervised person* has been *involved* in one of the events listed below, disclose all material facts regarding the event.

1. An award or otherwise being *found* liable in an arbitration claim alleging damages in excess of \$2,500, *involving* any of the following:

- (a) an investment or an *investment-related* business or activity;
- (b) fraud, false statement(s), or omissions;
- (c) theft, embezzlement, or other wrongful taking of property;
- (d) bribery, forgery, counterfeiting, or extortion; or
- (e) dishonest, unfair, or unethical practices.

2. An award or otherwise being *found* liable in a civil, *self-regulatory* organization, or administrative *proceeding* involving any of the following:

- (a) an investment or an *investment-related* business or activity;
- (b) fraud, false statement(s), or omissions;
- (c) theft, embezzlement, or other wrongful taking of property;
- (d) bribery, forgery, counterfeiting, or extortion; or
- (e) dishonest, unfair, or unethical practices.

#### Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

#### Domestic Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

#### Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration

brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

#### Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Adviser CRD Number: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Title: \_\_\_\_\_

#### Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

#### State-Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

#### 1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain your *principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject

to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration, or amending your registration.

#### 2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your *principal place of business* and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

#### Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: \_\_\_\_\_  
 Printed Name: Title: \_\_\_\_\_  
 Adviser CRD Number: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Title: \_\_\_\_\_

#### Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

#### Non-Resident Investment Adviser Execution

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

#### 1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative

*proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

## 2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

## 3. Non-Resident Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any person subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

## Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Adviser CRD Number: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Title: \_\_\_\_\_

## Appendix B—Form ADV-W (Paper Version): Notice of Withdrawal From Registration as an Investment Adviser

### Instructions for Form ADV-W

**Note:** Unless the context clearly indicates otherwise, all terms used in the Form have the same meaning as in the Investment Advisers Act of 1940 and in the General Rules and Regulations of the Commission thereunder (17 Code of Federal Regulations 275).

1. We would like to withdraw from registration as an investment adviser. What do we need to do?

You must determine whether you are filing for partial withdrawal or full withdrawal.

A *partial withdrawal* is when you are withdrawing from investment adviser registration with some, but not all, of the jurisdictions where you are registered (or have an application for registration pending). For example, you would file for partial withdrawal if you are switching from state registration to SEC registration (or vice versa). Similarly, you would file for partial withdrawal if you are a state-registered adviser and are withdrawing from some, but not all, of the states with which you are registered (or have an application for registration pending).

A *full withdrawal* is when you are withdrawing from all of the regulators with which you are registered (or have an application pending).

If you are filing for partial withdrawal and switching from SEC to state registration, you must complete the Status Section, Items 1A through 1D, and the Execution Section. You do not need to complete Items 1E through 8 of Form ADV-W.

If you are filing for partial withdrawal and switching from state to SEC registration, you must complete the entire Form ADV-W.

If you are registered only with the state securities authorities and withdrawing from some, but not all, of the states where you are registered, you must complete the entire Form ADV-W.

If you are filing for full withdrawal, you must complete the entire Form ADV-W.

2. We are going out of business. Does this change how we would answer particular questions on the Form ADV-W?

Yes. The purpose of Item 1D is so that we can contact you if the Form ADV-W is deficient or if we have questions. If you are going out of business, make sure you list in Item 1D an address and phone number at which we can reach the contact employee.

3. I am filing for partial withdrawal. How do I complete Item 2?

If you are ceasing advisory business in any of the jurisdictions from which you are withdrawing, check "yes." On the next line, provide the date on which you are ceasing advisory business in these jurisdictions (however, if you cease conducting advisory business on different dates in different jurisdictions, you must complete a separate Form ADV-W for each different date). The date you provide in this blank must be on or before the date you file Form ADV-W. Then, provide the reasons you are filing for withdrawal (regardless of whether you are filing for partial or complete withdrawal).

You are permitted to "post-date" the Form ADV-W to December 31 anytime between November 1 and December 31. You are permitted to enter a cease date of December 31 to avoid being charged state renewal fees in jurisdictions from which you are withdrawing (the IARD does not operate during the last week of each year and you are unable to make any filings during that time). However, you cannot enter any date other than December 31, and you can only enter a December 31 cease date after November 1.

4. I have completed Form ADV-W and filed it with the SEC. When will it become effective?

Your Form ADV-W will become effective when it is filed with the SEC. However, your Form ADV-W will not be deemed "filed" until the SEC receives it and determines that it is not deficient. The effective date of a Form ADV-W filed with the state securities authorities may be different.

5. How should I file my Form ADV-W?

You are required to file Form ADV-W electronically on the IARD.

In the event you are unable to submit an electronic filing, you must apply for a temporary or continuing hardship exemption pursuant to rule 203-3. If you can rely on a temporary or continuing hardship exemption, you must mail or fax two executed copies of the Form ADV-W to NASDR, at \_\_\_\_\_.

Whether you file on the IARD or are permitted to submit paper filings, you must preserve in your records a copy of the Form ADV-W that you file with the SEC.

6. What are the Schedules to Form ADV-W?

Form ADV-W contains two Schedules, Schedule W1 and W2. Your answers to Form ADV-W will determine whether you are required to complete either or both Schedules.

Schedule W1 is a "continuation page." If you have to list additional *persons* whom you have assigned advisory contracts (Item 5), or multiple *persons* or locations with respect to your books and records (Item 8), you must complete Schedule W1.

The names of individuals listed on Schedule W1 must be given in full.

Schedule W2 requires basic financial information relating to your investment advisory business. If you check "yes" to Items 3, 4, or 6, you are required to complete Schedule W2.

7. Questions about Item 8. The following examples are intended to assist you in completing Item 8 to Form ADV-W and Sections 8B and 8C of Schedule W1 in the event that multiple *persons* have or will have custody of your books and records, or in the event that your books and records are or will be kept at multiple locations.

a. After I withdraw from registration, two *persons* (*Persons A* and *B*) will have custody of my books and records, but my books and records will be kept at a single location. How should I complete the Form ADV-W and Schedule W1?

On Form ADV-W, you should check "yes" to Item 8.A.1., and "no" to Item 8.A.2. Leave Items 8B and 8C on Form ADV-W blank. You would complete two Schedules W1. The first would list *Person A*, and the location at

which your books and records will be kept. You would complete a second Schedule W1 that would list *Person B*, and would list (again) the location at which your books and records will be kept.

b. After I withdraw from registration, only one *person* will have custody of my books and records, but they will be kept at three locations (Locations X, Y and Z). How should I complete Form ADV-W and Schedule W1?

On Form ADV-W, you should check "no" to Item 8.A.1., and "yes" to Item 8.A.2. Leave Items 8B and 8C on Form ADV-W blank. You would complete three Schedules W1. The first would list the *person* that will have custody of your books and records, and Location X. The second Schedule W1 would list (again) the *person* that has or will have custody of your books and records, and Location Y. The third Schedule W1 would list (again) the *person* that has or will have custody of your books and records, and Location Z.

c. After I withdraw from registration, two people (*Persons A* and *B*) will have custody of my books and records, and my books and records will be kept at two locations (Locations Y and Z). Each *person* would have custody of the books and records that are kept at both locations. How should I complete Form ADV-W and Schedule W1?

On Form ADV-W, you should check "yes" to Item 8.A.1., and "yes" to Item 8.A.2. Leave Items 8B and 8C on Form ADV-W blank. You would complete four Schedules W1. The first would list *Person A* and Location Y. The second Schedule W1 would list (again) *Person A*, and would list Location Z. The third Schedule W1 would list *Person B* and Location Y, and the fourth Schedule W1

would list *Person B* and Location Z. On each Schedule W1, you should briefly describe the records that are kept at each location (e.g. business and trading records from 1996 through 1999).

8. Who should sign the Form ADV-W?

Copies of the Form ADV-W you file with the SEC must be executed by a *person* you have authorized to file the Form. If you are a sole proprietor, you must sign the Form; if you are a partnership, a general partner must sign the Form in the name of the partnership; if you are an unincorporated organization or association that is not a partnership, the managing agent (an authorized *person* who directs or manages or who participates in the directing or managing of its affairs) must sign the Form in the name of the organization or association; if you are a corporation, a principal officer duly authorized must sign the Form in the name of the corporation. If an officer of any entity is signing the Form, the officer's title must be given.

9. What if I need more space to provide additional information?

If you are filing electronically, add any additional information in the text box asking you to "describe the books and records kept at this location." If you are filing on paper, use the reverse side of Schedule W1 to provide any additional information.

10. What if I do not follow these instructions when completing the Form ADV-W?

If you do not prepare and execute the Form ADV-W as required by these instructions, SEC staff may return the form to you for correction. The SEC's acceptance of the Form, however, is not a finding that you have filed the Form ADV-W as required or that the

information submitted is true, correct or complete.

SEC'S COLLECTION OF INFORMATION. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Section 203(h) of the Advisers Act authorizes the Commission to collect the information on this Form from applicants. See 15 U.S.C. §§ 80b-3(h). Filing of this Form is mandatory for an investment adviser to withdraw from registration. The principal purpose of this collection of information is to enable the Commission to verify that the activities of an investment adviser seeking to withdraw from registration do not require the investment adviser to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. The Commission will maintain files of the information on Form ADV-W and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV-W, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

**BILLING CODE 8010-01-P**

## FORM ADV-W (Paper Version)

### NOTICE OF WITHDRAWAL FROM REGISTRATION AS AN INVESTMENT ADVISER

#### Form ADV-W

You must complete this Form ADV-W to withdraw your investment adviser registration with the SEC or one or more state securities administrators. We use the term "you" to refer to the investment adviser withdrawing from registration, regardless of whether the adviser is a sole proprietor, a partnership, a corporation, or another form of organization.

**WARNING:** Complete this form truthfully. False statements or omissions may result in administrative, civil or criminal action against you.

#### Status

Check the box that indicates what you would like to do:

- (i)  Withdraw from registration in all of the jurisdictions with which you are registered (or have an application for registration pending) (a "full withdrawal").
- (ii)  Withdraw from registration in some, but not all, of the jurisdictions with which you are registered (or have an application for registration pending) (a "partial withdrawal").

*If you are filing for full withdrawal, you must complete all items of this Form ADV-W. If you are filing for partial withdrawal, follow the instructions below for the type of partial withdrawal you are filing.*

If you are filing for partial withdrawal, indicate the jurisdictions from which you are withdrawing your investment adviser registration (or application for registration):

- (a)  The SEC;

*Check this box if you are withdrawing your SEC registration and switching to state registration, or if you are withdrawing your application for SEC registration. If you check this box (a), you must complete only this Status Section, Items 1A through 1D, and the Execution Section. Do not complete Item 1E and Items 2 through 8.*

- (b)  The state(s) for which the box(es) below are checked:

- |                             |                             |                             |                             |                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| <input type="checkbox"/> AL | <input type="checkbox"/> DC | <input type="checkbox"/> IA | <input type="checkbox"/> MN | <input type="checkbox"/> NM | <input type="checkbox"/> PR | <input type="checkbox"/> VA |
| <input type="checkbox"/> AK | <input type="checkbox"/> FL | <input type="checkbox"/> KS | <input type="checkbox"/> MS | <input type="checkbox"/> NY | <input type="checkbox"/> RI | <input type="checkbox"/> WA |
| <input type="checkbox"/> AZ | <input type="checkbox"/> GA | <input type="checkbox"/> KY | <input type="checkbox"/> MO | <input type="checkbox"/> NC | <input type="checkbox"/> SC | <input type="checkbox"/> WV |
| <input type="checkbox"/> AR | <input type="checkbox"/> GU | <input type="checkbox"/> LA | <input type="checkbox"/> MT | <input type="checkbox"/> ND | <input type="checkbox"/> SD | <input type="checkbox"/> WI |
| <input type="checkbox"/> CA | <input type="checkbox"/> HI | <input type="checkbox"/> ME | <input type="checkbox"/> NE | <input type="checkbox"/> OH | <input type="checkbox"/> TN |                             |
| <input type="checkbox"/> CO | <input type="checkbox"/> ID | <input type="checkbox"/> MD | <input type="checkbox"/> NV | <input type="checkbox"/> OK | <input type="checkbox"/> TX |                             |
| <input type="checkbox"/> CT | <input type="checkbox"/> IL | <input type="checkbox"/> MA | <input type="checkbox"/> NH | <input type="checkbox"/> OR | <input type="checkbox"/> UT |                             |
| <input type="checkbox"/> DE | <input type="checkbox"/> IN | <input type="checkbox"/> MI | <input type="checkbox"/> NJ | <input type="checkbox"/> PA | <input type="checkbox"/> VT |                             |

*If you check this box (b), you must complete all items of this Form ADV-W.*

#### Item 1 Identifying Information

- A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

\_\_\_\_\_

*The name you enter here must be the same as the name you entered on your last amended Form ADV. Do not report a name change on this Form ADV-W.*

Form ADV-W

Page 2

- B. Your SEC file number (if you are registered with the SEC as an investment adviser):

801- \_\_\_\_\_

- C. Your CRD number (if you have a number ("CRD number") assigned by the NASD's CRD system):

\_\_\_\_\_

*If you do not have a CRD number, skip this Item 1C. Do not provide the CRD number of one of your officers, employees, or affiliates.*

- D. Name and business address of contact employee:

\_\_\_\_\_ (name) \_\_\_\_\_ (title)

\_\_\_\_\_ (number and street)

\_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (country) \_\_\_\_\_ (zip+4/postal code)

\_\_\_\_\_ (area code) \_\_\_\_\_ (telephone number)

\_\_\_\_\_ (electronic mail (e-mail) address, if contact employee has one)

*The contact employee should be an employee (not outside counsel) who is authorized to receive information and respond to questions about this Form ADV-W.*

- E. Principal Office and Place of Business:

Address (do not use a P.O. Box):

\_\_\_\_\_ (number and street)

\_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (country) \_\_\_\_\_ (zip+4/postal code)

\_\_\_\_\_ (area code) \_\_\_\_\_ (telephone number)

## Item 2 Status of Advisory Business

- A. Have you ceased conducting advisory business in the jurisdictions from which you are withdrawing? Yes  No

If yes, provide the date you ceased conducting advisory business in the jurisdictions checked in the status section, above:

\_\_\_\_\_ MM / DD / YYYY

*If you ceased conducting advisory business in these jurisdictions on different dates, you must submit a different Form ADV-W for each different date on which you ceased conducting advisory business.*

- B. Reasons for withdrawal: \_\_\_\_\_

\_\_\_\_\_

## Item 3 Custody

Do you or a *related person* have *custody* of *client* assets?

Yes  No

If yes, provide the following information:

- A. Number of *clients* for whom you have *custody* of cash or securities: \_\_\_\_\_
- B. Amount of *clients'* cash for which you have *custody*: \$ \_\_\_\_\_ .00
- C. Market value of *clients'* securities for which you have *custody*: \$ \_\_\_\_\_ .00
- D. Market value of assets other than cash or securities for which you have *custody*: \$ \_\_\_\_\_ .00

## Item 4 Money Owed to Clients

Have you (i) received any advisory fees for investment advisory services or publications that you have not rendered or delivered; or (ii) borrowed any money from *clients* that you have not repaid? Yes  No

*Do not include in your response to this Item 4 any client funds for which you have custody and that you included in your response to Item 3.*

If yes, provide the following information:

- A. Amount of money owed to *clients* for prepaid fees or subscriptions: \$ \_\_\_\_\_ .00
- B. Amount of money owed to *clients* for borrowed funds: \$ \_\_\_\_\_ .00

## Item 5 Advisory Contracts

A. Have you assigned any of your investment advisory contracts to another person?

Yes  No

If yes, provide the following information:

B. Did you obtain the consent of each *client* prior to the assignment of the *client's* contract?

Yes  No

*Client consent can be obtained through an actual consent, or can be inferred through the use of a negative consent.*

C. Name and business address of the person to whom the contracts were assigned:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(number and street)

\_\_\_\_\_  
(city) (state) (country) (zip +4/postal code)

\_\_\_\_\_  
(area code) (telephone number)

D. Have you assigned any of your advisory contracts to any other person?

Yes  No

*List on Section 5C of Schedule W1 any additional persons to whom you have assigned any of your investment advisory contracts.*

## Item 6 Judgments and Liens

Are there any unsatisfied judgments or liens against you? Yes  No

## Item 7 Statement of Financial Condition

If you answered yes to Items 3, 4, or 6, you must complete Schedule W2, disclosing the nature and amount of your assets and liabilities and your net worth as of the last day of the month prior to the filing of this Form ADV-W.

## Item 8 Books and Records

- A. 1. Is there more than one person who has or will have custody or possession of any of your books and records?  
Yes  No
2. Is there more than one location at which your books and records are or will be kept?  
Yes  No

If you answered "no" to both of these questions, complete the following Items 8B and 8C. If you answer "yes" to either of these questions, leave the following Items 8B and 8C blank, and complete Schedule W1. You must complete a separate Schedule W1 for each person who has or will have custody of your books and records at each location. The instructions to Form ADV-W contain additional information to assist you in answering this Item 8 of Form ADV-W.

- B. If you answered "no," to both questions in Item 8A of this Form ADV-W, provide the name and address of the person who has or will have custody or possession of your books and records.

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(number and street)

\_\_\_\_\_  
(city) (state) (country) (zip+4/postal code)

\_\_\_\_\_  
(area code) (telephone number)

- C. If you answered "no," to both questions in Item 8A of this Form ADV-W, provide the location at which your books and records are or will be kept.

\_\_\_\_\_  
(number and street)

\_\_\_\_\_  
(city) (state) (country) (zip+4/postal code)

*NOTE: Section 204 of the Advisers Act, or similar state law, requires you to preserve your books and records after you have withdrawn from registration.*

Execution

I, the undersigned, have signed this Form ADV-W on behalf of, and with the authority of, the adviser withdrawing its registration. The adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form ADV-W, including exhibits and any other information submitted, are true. I further certify that all information previously submitted on Form ADV is accurate and complete as of this date, and that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any person having *custody* or possession of these books and records to make them available to authorized regulatory representatives.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**FORM ADV-W**  
**Schedule W1**  
**(Paper Version)**

 Your Name: \_\_\_\_\_ SEC File No.: \_\_\_\_\_  
 Date: \_\_\_\_\_ CRD No.: \_\_\_\_\_

Certain items in Form ADV-W may require additional information on this Schedule W1. Use this Schedule W1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

**SECTION 5C Other Investment Advisory Contract Assignments**

 Check here if you are completing this section: 

Complete the following information for each *person* to whom you have assigned any advisory contract but who is not listed on Form ADV-W. You must complete a separate Schedule W1 for each *person* (other than the *person* listed in Item 5 of Form ADV-W) to whom you have assigned an advisory contract.

 Name and business address of the *person* to whom advisory contracts were assigned:

 \_\_\_\_\_  
 (name)  
 \_\_\_\_\_  
 (number and street)  
 \_\_\_\_\_  
 (city) (state) (country) (zip+4/postal code)  
 \_\_\_\_\_  
 (area code) (telephone number)

**SECTION 8B Persons With Custody or Possession of the Books and Records Kept at the Location Described in Section 8C of this Schedule W1 (below).**

 Check here if you are completing this section: 

Complete the following information for the *person* that has or will have custody or possession of the books and records kept at the location described in Section 8C of this Schedule. If you are required to complete Item 8B of this Schedule, you must complete a separate Schedule W1 for each *person* that has or will have custody of any of your books and records. If the *person* you list below has or will have custody of any of your books and records at any other location, you must complete separate Schedule(s) W1 listing this *person* and each other location of your books and records.

 \_\_\_\_\_  
 (name)  
 \_\_\_\_\_  
 (number and street)  
 \_\_\_\_\_  
 (city) (state) (country) (zip+4/postal code)  
 \_\_\_\_\_  
 (area code) (telephone number)

**SECTION 8C Location of Books and Records of Which the Person Listed in Section 8B of this Schedule W1 Has Custody or Possession.**

 Check here if you are completing this section: 

Complete the following information for the location where the books and records of which the *person* listed in Section 8B of this Schedule has or will have custody or possession. If you are required to complete Item 8C of this Schedule, you must complete a separate Schedule W1 for each location at which your records are or will be kept. If any other *person* has or will have custody or possession of any of the books and records at the location described below, you must complete separate Schedule(s) W1 listing this location and each other *person* that has or will have custody of your books and records.

 \_\_\_\_\_  
 (name)  
 \_\_\_\_\_  
 (number and street)  
 \_\_\_\_\_  
 (city) (state) (country) (zip+4/postal code)  
 \_\_\_\_\_  
 (area code) (telephone number)

Briefly describe the books and records kept at this location. \_\_\_\_\_

**FORM ADV-W**  
**Schedule W2**  
**(Paper Version)**

Your Name: \_\_\_\_\_ SEC File No.: \_\_\_\_\_  
 Date: \_\_\_\_\_ CRD No.: \_\_\_\_\_

If you answered "yes" to Items 3, 4, or 6 of Form ADV-W, you are required to complete this Schedule W2. This balance sheet must be prepared in accordance with generally accepted accounting principles, but need not be audited.

**ASSETS**

Current Assets

Cash \_\_\_\_\_  
 Securities at Market \_\_\_\_\_  
 Non-Marketable Securities \_\_\_\_\_  
 Other Current Assets \_\_\_\_\_  
**Total Current Assets** \$ \_\_\_\_\_

Fixed Assets

**Total Fixed Assets** \$ \_\_\_\_\_

**TOTAL ASSETS** \$ \_\_\_\_\_

**LIABILITIES & SHAREHOLDERS' EQUITY**

Current Liabilities

Prepaid Advisory Fees \_\_\_\_\_  
 Short-Term Loans from Clients \_\_\_\_\_  
 Other Short-Term Loans \_\_\_\_\_  
 Other Current Liabilities \_\_\_\_\_  
**Total Current Liabilities** \$ \_\_\_\_\_

Fixed Liabilities

Long-Term Debt Owed to Clients \_\_\_\_\_  
 Other Long-Term Debt \_\_\_\_\_  
 Other Long-Term Liabilities \_\_\_\_\_  
**Total Fixed Liabilities** \$ \_\_\_\_\_

Shareholders' Equity

**Total Shareholders' Equity (or Deficit)** \$ \_\_\_\_\_

**TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY** \$ \_\_\_\_\_

## APPENDIX C

OMB APPROVAL	
OMB Number:	3235-____
Expires:	_____
Estimated average burden hours per response.....	1.00

**Form ADV-H****APPLICATION FOR A TEMPORARY OR CONTINUING HARDSHIP EXEMPTION**

## Item 1 Type of Exemption

You are (check one):

- Requesting a Temporary Hardship Exemption; or
- Applying for a Continuing Hardship Exemption
- A. If you are requesting a temporary hardship exemption, this Form ADV-H is for your (check one)
- Initial SEC Application  Annual Updating Amendment to SEC Registration
- Other-Than-Annual Amendment to SEC Registration
- B. If you are applying for a continuing hardship exemption, this Form ADV-H is for all filings between the date you file this form and \_\_\_\_\_.
- MM / DD / YYYY

Only an adviser that is a "small business" (as defined by SEC rule 0-7) is eligible for a continuing hardship exemption. To determine whether you are eligible for a continuing hardship exemption, review Item 12 of the Form ADV that you filed most recently with the SEC to answer the following questions:

Were you required to answer Item 12 of Form ADV? Yes  No

Did you check "yes" to any question on Item 12 of Form ADV? Yes  No

If you were not required to answer Item 12 or checked "yes" to any question on Item 12, you are not eligible for a continuing hardship exemption and must submit electronic filings to the IARD system.

## Item 2 Identifying Information

SEC File number: 801 - \_\_\_\_\_ CRD Number (if you have one) \_\_\_\_\_

- A. Your full legal name (if you are a sole proprietor, state your last, first, and middle names):

\_\_\_\_\_

- B. *Principal Office and Place of Business*  
Address (do not use a P.O. Box):

\_\_\_\_\_

(number and street)

\_\_\_\_\_

(city) (state) (country) (zip+4/postal code)

- C. Name and telephone number of the individual filing this Form ADV-H:

\_\_\_\_\_

(name) (title) (area code) (telephone number)

## Item 3 Information Relating to the Hardship

- A. If you are filing to request a temporary hardship exemption, attach a separate page that:
1. Describes the nature and extent of the temporary technical difficulties when you attempt to submit the filing in electronic format.
  2. Describes the extent to which you previously have submitted documents in electronic format with the same hardware and software that you are unable to use to submit this filing.

3. Describes the burden and expense of employing alternative means (*e.g.* public library, service provider) to submit the filing in electronic format in a timely manner.
  4. Provides any other reasons why a temporary hardship exemption is warranted.
- B. If you are applying for a continuing hardship exemption, your application will be granted or denied based on the following items. You should attach a separate page to this Form ADV-H that:
1. Explains the reason(s) that the necessary hardware and software are not available without unreasonable burden and expense.
  2. Describes the burden and expense of employing alternative means (*e.g.* public library, service provider) to submit your filings in electronic format in a timely manner.
  3. Justifies the time period requested in Item 1 of this Form ADV-H.
  4. Provides any other reasons why a continuing hardship exemption is warranted.

#### Item 4 How to Submit Your Form ADV-H

Sign this Form ADV-H. You must preserve in your records a copy of the Form ADV-H that you file. If you are submitting this Form ADV-H to the NASDR by fax, the number is 301/590-\_\_\_\_. If you are sending it by regular or express mail, send \_\_\_\_ copies to \_\_\_\_\_.

#### Item 5 Execution

I, the undersigned, have signed this Form ADV-H on behalf of, and with the authority of, the adviser requesting a temporary hardship exemption or applying for a continuing hardship exemption. The undersigned and the adviser represent that the information and statements made in this ADV-H, including any other information submitted, are true. The undersigned and the adviser further agree to waive any claim against the administrator of the IARD for errors made in good faith that may occur when converting to electronic format this Form ADV-H or any paper filing made in reliance of a continuing hardship exemption.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**SEC'S COLLECTION OF INFORMATION.** An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Section 203(h) of the Advisers Act authorizes the Commission to collect the information on this Form from applicants. See 15 U.S.C. §§ 80b-3(h). Filing of this Form is mandatory for an investment adviser to withdraw from registration. The principal purpose of this collection of information is to enable the Commission to verify that the activities of an investment adviser seeking to withdraw from registration do not require the investment adviser to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. The Commission will maintain files of the information on Form ADV-W and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV-W, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

**Appendix D—Form ADV–NR—(Paper Version); Appointment of Agent For Service of Process by Non-Resident General Partner and Non-Resident Managing Agent of an Investment Adviser**

You must submit this Form ADV–NR if you are a *non-resident* general partner or a *non-resident managing agent* of any investment adviser (domestic or non-resident). Form ADV–NR must be signed and submitted in connection with the adviser's initial application. If the mailing address you list below changes, you must file an amended Form ADV–NR to provide the current address. If you become a *non-resident* general partner or a *non-resident managing agent* after the date the adviser files its initial application, you must file Form ADV–NR with the Commission within 30 days. If you serve as a general partner or *managing agent* for multiple advisers, you must submit a separate Form ADV–NR for each adviser.

**1. Appointment of Agent for Service of Process**

By signing this Form ADV–NR, you, the undersigned *non-resident general partner* or

*non-resident managing agent*, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State, or equivalent officer, of the state in which the adviser referred to in this form maintains its *principal office and place of business*, if applicable, and any other state in which the adviser is applying for registration, amending its registration, or submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, order instituting proceedings, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative proceeding or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration: (a) arises out of any activity in connection with the investment adviser's business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934,

the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which the adviser referred to in this Form maintains its principal office and place of business, if applicable, or of any state in which the adviser is applying for registration, amending its registration, or submitting a *notice filing*.

**2. Appointment and Consent: Effect on Partnerships**

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

**BILLING CODE 8010-01-P**

Signature

I, the undersigned *non-resident* general partner or *non-resident managing agent*, certify, under penalty of perjury under the laws of the United States of America, that the information contained in this Form ADV-NR is true and correct and that I am signing this Form ADV-NR as a free and voluntary act.

Signature of Partner or Agent:

\_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Mailing Address of Partner or Agent (no P.O. Boxes):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Investment Adviser:

\_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Adviser CRD Number: \_\_\_\_\_

Adviser Name: \_\_\_\_\_



# Federal Register

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**Monday,  
April 17, 2000**

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**Part III**

## **Department of the Interior**

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**National Park Service**

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**36 CFR Part 51  
Concession Contracts; Final Rule**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 51****RIN 1024-AC72****Concession Contracts****AGENCY:** National Park Service, Interior.**ACTION:** Final rule.

**SUMMARY:** This rule amends 36 CFR Part 51, the National Park Service (NPS) regulations concerning NPS concession contracts, to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998 (the 1998 Act). The 1998 Act provides new legislative authorities, policies and procedures for the solicitation, award and administration of concession contracts by NPS. This rule was published as proposed for public comment in the **Federal Register** as a matter of policy on June 30, 1999. NPS provided a 60-day public comment period on the proposed rule. This was extended by 45 days upon public request. NPS has fully considered all public comments received and considers this final rule to be lawful, consistent with the policies of Congress as expressed in the 1998 Act, and as accommodating to the concerns of commenters as possible in light of the legal and administrative responsibilities of NPS under the 1998 Act and other applicable authorities.

**EFFECTIVE DATE:** May 17, 2000.**FOR FURTHER INFORMATION CONTACT:**

Wendelin Mann, Concession Program, National Park Service, 1849 C Street, NW, Washington, DC 20240 (202/565-1219).

**SUPPLEMENTARY INFORMATION:** The 1998 Act has established a new statutory framework for the solicitation, award and administration of NPS concession contracts. Concession contracts are the form of governmental authorization used to permit persons (concessioners) to provide accommodations, facilities, and services to visitors to areas of the national park system. These services include, for example, lodging, food, merchandising, transportation, outfitting and guiding, and similar activities.

NPS has been awarding and administering concession contracts for this purpose in various forms since 1916 under the terms of 16 USC 1 *et seq.*, the NPS "Organic Act." In 1965, Congress formally established by the Concession Policies Act of 1965, 16 USC 20 *et seq.* (the 1965 Act), a number of policies and procedures regarding concession

contracts. NPS regulations contained in 36 CFR Part 51 implemented the 1965 law. On November 13, 1998, the Congress substantially revised these policies and procedures by passage of the 1998 Act. Many of the policies and procedures adopted by NPS in 36 CFR Part 51, as amended, and standard NPS concession contracts developed under the 1965 Act are reflected in the terms of the 1998 Act.

The Congress had two primary objectives in revising the 1965 Act: making the NPS concession management program more efficient and enhancing competition in NPS concession contracting.

The first objective is reflected in provisions of the 1998 Act that call, among other matters, for contracting to private businesses certain aspects of NPS concessions management and the establishment of an NPS Concessions Management Advisory Board to advise NPS on the conduct of its concessions management program. These provisions, although very important, will be implemented administratively by NPS rather than through program regulations.

The second objective, enhancement of competition in NPS concession contracting, is reflected in the 1998 Act in a number of ways. Primarily, however, the 1998 Act achieves greater competition in two ways.

First, to achieve greater competition, the 1998 Act repealed, except for smaller and outfitter and guide concession contracts, the "preference in renewal" provision of the 1965 Act. The 1965 Act's preference in renewal provision required NPS to give existing satisfactory concessioners a preference in the renewal of their concession contracts, if the contract was to be continued after its expiration. This preference required NPS to permit existing satisfactory concessioners to meet the better terms and conditions of the best competing proposal for the renewal of its concession contract. Because of this preference, NPS estimated in 1993 that since 1965 over 99.9% of the renewals of NPS concession contracts had been awarded to the existing concessioner. In fact, from 1965 to 1993, only seven NPS concession contracts out of approximately 1900 awarded were not awarded to the incumbent concessioner (where the incumbent sought the contract). True competition simply did not exist.

The legislative history of the 1998 Act states as follows in connection with the repeal of the preference in renewal:

Under the 1965 Act, all satisfactory concessioners are entitled to preference in

renewal of their concession contracts or permits. However, in light of the current circumstances of units of the National Park System and in recognition of present business conditions, the Committee considers that generally there is now no need to continue to provide a preferential right of renewal to concessioners in order to obtain qualified operators. Accordingly, to foster appropriate competition in the award of National Park Service concession contracts, the preferential right of renewal provided as a statutory right to existing satisfactory concessioners is repealed by the S. 1693 [the bill that became the 1998 Act], S. Rep. No. 105-202, at p.31 (1998).

The 1998 Act's other primary means to enhance competition in concession contracting was its reform of the 1965 Act's "possessory interest" concept. Under the 1965 Act, a concessioner that constructed real property improvements on park area lands under the terms of a concession contract obtained a compensable interest in the improvements in the form of a "possessory interest." The value of the possessory interest as of the date of the expiration or other termination of the concession contract was the "sound value" of the improvements to which the possessory interest related, but, not to exceed the "fair market value of the improvements," unless NPS and the concessioner agreed to an alternative value.

The Congress in considering S. 1693 noted that possessory interest under the 1965 Act was frequently criticized as "anti-competitive" because "the value of an existing concessioner's possessory interest was difficult to establish, thereby discouraging submittal of competitive offers for renewal of concession contracts." S. Rep. No. 105-202, at p. 35 (1998).

The 1998 Act reformed the possessory interest provisions of the 1965 Act through the leasehold surrender interest concept. Instead of obtaining a possessory interest in real property improvements as provided by the 1965 Act, the 1998 Act provides a "leasehold surrender interest" in "capital improvements" a concessioner constructs on park area lands "under the terms of a concession contract." The legislative history states as follows about the purposes of leasehold surrender interest:

The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investment in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical

condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary [of the Interior] can accurately calculate the amount for purposes of competitive solicitation of concession contracts. *Id.*

This final rule has three major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by NPS under the 1998 Act. With certain exceptions, the 1998 Act requires competitive award of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a better competing proposal for a new concession contract. In fact, although the preference in renewal was the most mentioned issue in the comments received, more than 75% of the some 630 current NPS concessioners will continue to benefit from a preference in the renewal of their concession contracts. This is because the 1998 Act extends a preference in renewal to concessioners with contracts that have gross receipts of less than \$500,000 or are outfitter and guide concessioners (more than 75% of the total).

Second, unlike the existing 36 CFR Part 51, the final rule sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This leasehold surrender interest is defined in general terms in the 1998 Act. This rule establishes appropriate specific terms and conditions for leasehold surrender interests under the authority of the 1998 Act. Clarity as to the scope of leasehold surrender interest is important to both NPS and concessioners. Accordingly, the leasehold surrender interest subpart of this rule is lengthy. However, concession contracts will be proportionately shorter as for the most part they will refer to this rule with respect to leasehold surrender interest terms and conditions.

Finally, the rule describes a number of provisions that concession contracts will contain in implementation of the 1998 Act.

The final rule reflects NPS's interpretation of the various provisions of the 1998 Act to appropriately administer the Act's requirements and purposes that are suitable for regulatory

implementation. Section 417 of the 1998 Act requires NPS to promulgate regulations "appropriate for its implementation."

#### A. Response to Public Comments

NPS responds to public comments as follows. The symbol "\*\*\*\*" under a section heading indicates that no (non-duplicative) comments requiring a response expressly addressed the section.

#### Scope of Comments

NPS received 125 public comments on the proposed rule. Of these, the vast majority were from existing concessioners, attorneys representing existing concessioners, or existing concessioner organizations. Several organizations with members that are existing NPS concessioners commented on the proposed regulations. Most of these organizations are generally interested in "outfitter and guide" concession contracts. One organization, referred to in the discussion below as the "general concessioner organization," is an organization with more than 150 existing concessioner members (according to its comment). Several of the members of this organization submitted separate comments that endorsed the comments of the general concessioner organization. Where NPS states below that the general concessioner organization or other organizations made comments, this refers collectively to the comments of the organization and comments separately submitted in support of the organization's views.

Only a handful of "non-incumbent concessioner" individuals and groups commented on the proposed regulations. The vast majority of comments received were from existing concessioners or concessioner organizations. Nonetheless, NPS has taken into account in developing the final rule the interests of the general public and non-incumbent concessioners, *i.e.*, persons that may now seek to become concessioners under the more competitive terms of the 1998 Act. NPS has an obligation to consider these interests under the mandates of the 1998 Act and 16 U.S.C. 1 *et seq.*, the NPS Organic Act, which requires NPS to preserve the resources of the national park system and to provide for their enjoyment by visitors by such means as will leave them unimpaired for the enjoyment of future generations.

#### 1. General Comments

##### Repeal of the 1965 Act's Preference in Renewal

The major concern of existing concessioners was the 1998 Act's repeal of the 1965 Act's preference in renewal. Some existing concessioners consider it unfair (and illegal) to deprive them of a preference in the renewal of their existing contracts or permits (1965 Act concession contracts). Many commenters criticized NPS in this regard, although the repeal of the preference in renewal was by statute. The basis for this criticism is the perception that NPS has discretion to determine that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to the renewal of 1965 Act concession contracts. This is not the case.

Section 415(a) of the 1998 Act expressly repealed the 1965 Act, including its Section 5 (16 U.S.C. 20d) which required NPS to give existing satisfactory concessioners a preference in renewal of their contracts. In addition, Section 403(7) of the 1998 Act states that, except as provided in the express circumstances set forth in the 1998 Act, NPS "shall not grant a concessioner a preferential right to renew a concession contract, or any form of preference to a concession contract."

NPS has fully reviewed the legal arguments made by existing concessioners and their attorneys. NPS considers, however, that nothing contained in these arguments provides it with a reasonable basis to conclude that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to NPS 1965 Act concession contracts or permits. NPS also points out that a contrary interpretation would be in direct conflict with the 1998 Act's purpose of enhancing competition in concession contracting.

In this connection, one commenter on the proposed regulations, a major existing concessioner (that looks forward to the opportunity to compete freely for additional NPS concession contracts) submitted an opinion of counsel along with its comments on the regulations. The opinion of counsel supports the views of NPS on this issue.

The NPS position is based on the express terms of the 1998 Act and the fact that standard 1965 Act concession contracts do not refer to a preference in renewal.

In this connection, Section 415(a) of the 1998 Act states that the Act is applicable to 1965 Act concession contracts, as follows:

(a) Repeal.—Public Law 89–249 (commonly known as the National Park Service Concession Policy Act; 16 U.S.C. 20 *et seq.*) is repealed. The repeal of such Act shall not affect the validity of any concessions contract or permit entered into under such Act, but the provisions of this title shall apply to any such contract or permit except to the extent such provisions are inconsistent with the terms and conditions of any such contract or permit. References in this title to concessions contracts awarded under authority of such Act also apply to concessions permits awarded under such authority.

Accordingly, unless the provisions of the 1998 Act are “inconsistent with the terms and conditions” of a 1965 Act concession contract, the 1998 Act applies in full to 1965 Act concession contracts.

NPS points out that standard 1965 Act concession contracts make no reference to a preference in renewal. The reason for this is that the preference in renewal provision contained in the 1965 Act did not establish the preference in renewal as a contract right. Section 5 of the 1965 Act states as follows in pertinent part:

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary.

This provision does not state that an existing satisfactory concessioner has a right to a preference in renewal of an existing concession contract as a contract right or otherwise. It also does not authorize NPS to grant such a contract right. Rather, it imposes a statutory obligation on NPS (acting for the Secretary of the Interior) to give preference in the renewal of concession contracts to existing satisfactory concessioners.

In contrast, other provisions of the 1965 Act state that they authorize NPS to grant contract rights. Section 3(a) of the 1965 Act states that the Secretary “may include in [concession] contracts \* \* \* such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment \* \* \* resulting from the discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective. \* \* \*” (Emphasis added.)

In addition, Section 4 of the 1965 Act states that the Secretary “may grant to such concessioners a preferential right to provide such new or additional accommodations, facilities or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public.” (Emphasis

added.) Prior to 1979, standard NPS concession contracts contained an express provision that provided a preferential right to additional services.

The 1965 Act, accordingly, clearly distinguished among its provisions that were intended to authorize the establishment of contract rights and provisions that were intended to impose a statutory obligation on the Secretary without establishing a contract right. In furtherance of these authorities and this distinction, existing 1965 Act concession contracts contain a number of contractual provisions authorized by Section 3(a) and Section 4 of the 1965 Act, but make no reference to a preference in contract renewal.

In this connection, NPS notes that, although not required by law to do so, NPS published for public comment in both 1979 and 1992 revisions to its standard concession contract, and, published the final new standard concession contracts in the **Federal Register**. Neither of these standard concession contracts includes a term or condition regarding preference in renewal or even refers to a preference in renewal. Prior standard concession contracts, going back to the passage of the 1965 Act, also do not refer to a preference in renewal.

Accordingly, the 1998 Act’s repeal of the 1965 Act’s preference in renewal is not “inconsistent with the terms and conditions” of NPS standard concession contracts. Rather, the 1998 Act repeals a statutory requirement obliging the government to give concessioners a preference in renewal.

There is also the matter of congressional understanding of the application of Section 415(a) of the 1998 Act to the 1965 Act’s preference in renewal. The legislative history of the 1998 Act set forth above (from both the Senate and House of Representatives) expressly describes the 1965 Act’s preference in renewal as a “statutory right” and states that it is repealed by S. 1693. There is no suggestion in the 1998 Act’s legislative history that the repeal does not apply to existing concession contracts.

In this connection, Congress must be presumed to know that the 1965 Act described the preference in renewal as a statutory obligation for the Secretary to perform and that 1965 Act concession contracts, formally published in the **Federal Register** in 1979 and 1993, do not provide or refer to a preference in renewal.

The fundamental argument of incumbent concessioners as to why they retain a preference in renewal of their existing contracts is that the contracts contain an implied term granting a

preference in renewal. NPS has duly taken this position. NPS considers this position wrong for three basic reasons.

First, it is firmly established that a “promise” contained in a statute is not binding on the government (or analogous to a contractual promise), since it is presumed that laws are always susceptible to change by future legislatures. As the Supreme Court has put it, the presumption is that a “law is not intended to create private contractual vested rights, but merely declares a policy to be pursued until the legislature shall ordain otherwise.” *National R.R. Passenger Corp. v. Atchinson Topeka and Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (quoting *Dodge v. Board of Education*, 302 U.S. 74, 79 (1937)).

This well-established presumption is grounded in the elementary proposition that the principal function of the legislature is not to make contracts, but to make laws that establish the policy of the state. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of the legislative body. *National RR Passenger Corp.*, 470 U.S. 451, 465 (internal citations omitted).

The Supreme Court has consistently rejected the argument that the statutory or regulatory regime existing at the time of contract formation is implicitly written into the contract by force of law. To the contrary, the Court has always insisted that, regardless of the state of the law at the time of the contract, the contract itself must affirmatively promise future regulatory treatment in order to create an enforceable obligation against the government to provide such future treatment. As stated in *Bowen v. Public Agencies Opposed to Social Sec. Entrapment*, 477 U.S. 41, 52–53 (1986), with respect to commercial contracts, absent an “unmistakable” contract provision, “contractual arrangements, including those to which a sovereign itself is a party, ‘remain subject to subsequent legislation’ by the sovereign.” *Id.* at 52 (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 147 (1982)).

NPS also notes that the 1965 Act’s preference in renewal imposed a statutory obligation on the Secretary to give existing concessioners a preference in renewal. Section 5, however, unlike Sections 3(a) and (4) of the 1965 Act, makes no mention of any authority to grant concessioners a preference in renewal as a contract right. Authority for a government official to turn a statutory obligation of the official into a contractual right must be provided by

the legislative branch in clear and unmistakable terms. *Home Telegraph & Telephone Co. v. Los Angeles*, 211 U.S. 265, 277 (1908). Section 5 of the 1965 Act by no means meets this test.

Finally, even if these considerations are not controlling law, the argument that an implied provision of NPS concession contracts gives the concessioner a contractual right to a preference in renewal is inconsistent with the express terms of almost all current NPS concession contracts and permits with annual gross receipts in excess of \$500,000. Almost all of such contracts expressly state (or state in analogous terms) that:

This Contract [or permit] and the administration of it by the Secretary shall be subject to the laws of Congress governing the Area and rules, regulations and policies whether now in force or hereafter enacted or promulgated. (Emphasis added.)

Accordingly, almost all NPS concession contracts and permits with annual gross receipts in excess of \$500,000 expressly state that they are subject to changes in law. The existing concessioners' implied contractual right argument, even if it were otherwise of legal merit, fails under these express terms of NPS concession contracts and permits.

NPS notes that the comments of the general concessioner organization point out that the version of Section 415 of S. 1693 (the bill that became the 1998 Act) that initially passed the Senate referred to "express" terms and conditions of 1965 Act concession contracts while the bill as reported out of the House of Representatives and ultimately enacted did not contain the word "express." The comments suggest that this means that Congress intended Section 415 of the 1998 Act to apply to implied, as well as express, terms of 1965 Act concession contracts.

NPS notes, however, that the legislative history of the 1998 Act provides no guidance as to the intentions of the Congress in deleting the word "express" from S. 1693. In fact, Senator Thomas, the principal author of S. 1693, in commenting on the competitive results of the bill after the unexplained deletion of the word "express," stated as follows:

We have eliminated the preferential right of renewal so that there is competition for those services as they are renewed. Cong. Rec., S. 12540, Daily Ed., October 14, 1998. (Emphasis added.)

Clearly, Senator Thomas considered that S. 1693's repeal of the preference in renewal was of immediate and comprehensive effect.

NPS also notes Section 419 of the 1998 Act (described in the 1998 Act as a "savings provision"). Section 419 was included in S. 1693 at the same time the word "express" was deleted from Section 415. Section 419(a) "grandfathered" certain existing prospectuses for cruise ship concession permits for Glacier Bay National Park, requiring their award "under provisions of existing law." Section 419(b) then requires that:

Notwithstanding any provision of this title, the Secretary, in awarding future Glacier Bay cruise ship concession permits for which a preferential right of renewal existed prior to the effective date of this title, shall provide for such cruise ship entries a preferential right of renewal, as described in subparagraphs (C) and (D) of section 403(7). (Emphasis added.)

This "savings" provision clearly indicates that the 1965 Act's preference in renewal no longer existed as of the passage of the 1998 Act. Moreover, if 1965 Act concession contracts had an implied contractual right of preference in renewal, as argued by existing concessioners, there would have been no need for the Congress to include Section 419(b) in the 1998 Act, that is, to provide a further preference in renewal after the effective date of the 1998 Act for concession contracts that were to be awarded "under provisions of existing law." The general concessioner organization's argument as to the intention of Congress in deleting the word "express" from S. 1693 is contradicted by the terms of Section 419.

For these reasons, NPS concludes that it is not authorized under the 1998 Act to promulgate concession regulations that implement a preference in renewal except as expressly authorized by Sections 403(7) and (8) of the 1998 Act. However, the final rule, generally tracking a similar provision in the proposed rule, permits any existing concessioner holding a 1965 Act concession contract that makes express reference to a preference in renewal to request the Director to determine whether such express reference may result in a continuing preference in renewal by operation of law. This right of appeal is discussed further under Section 51.116.

#### Evaluation of Proposals

Another general concern of commenters was the method contained in the proposed regulations for evaluating concession contract proposals and selecting the best proposal. The commenters objected to the lack of a numerical evaluation method and to the fact that

environmental considerations and the amount of franchise fee offered were "tie-breakers" in the evaluation system. The commenters argued that these provisions were in conflict with the intent of Congress that consideration of revenue to the United States is subordinate to protection of resources and providing quality visitor services.

NPS does not agree with these perceptions of the consequences of the proposed rule. NPS, however, in the final rule, has accommodated these concerns through several incremental changes, including incorporation of a numerical scoring system into the narrative evaluation methodology contemplated by the proposed rule and by changing the "tie-breaker" provision to track the terms of the 1998 Act. The modifications are discussed below in the section-by-section analysis.

#### Leasehold Surrender Interest

A further general concern was the terms and conditions of leasehold surrender interest. Commenters considered several of the provisions of the proposed regulations to be inconsistent with the 1998 Act and to give NPS too much authority to determine the scope of a concessioner's leasehold surrender interest. NPS, in the final rule, has made a number of incremental changes to the leasehold surrender interest provisions of the regulations to accommodate the commenters' concerns. These are also discussed in the section-by-section analysis. The general concessioner organization and others also made the point that it is not clear which provisions of the regulations regarding leasehold surrender interest will be incorporated as terms and conditions of concession contracts and not be subject to modification by amended regulations or changes in law. The new NPS standard concession contract will make this clear.

### 2. Section by Section Analysis of Public Comments and Description of Changes in the Final Rule

#### Subpart A—Authority and Purpose

##### Section 51.1 What Does This Part Cover?

(a) This subsection has been modified to more closely track the language of the 1998 Act with regard to the purpose of concession contracts and, in response to comments, to reference Section 415(c) of the 1998 Act which states that the 1998 Act does not supersede the requirements of 16 USC 3101 in regard to revenue producing visitor services in Alaska park areas.

(b) A number of comments mentioned commercial use authorizations as described by Section 418 of the 1998 Act and stated that the regulations should have encompassed them. However, the proposed regulations referenced the separate authority of NPS to issue commercial use authorizations. NPS is in the process of drafting regulations for commercial use authorizations and intends to publish proposed regulations for public comment as a matter of policy. These regulations will also address the scope of the statutory exemption granted non-profit organizations by Section 418 of the 1998 Act, an issue mentioned in several comments.

A comment also stated that the term "incidental visitor services" should be defined. NPS considers incidental visitor services to be supporting services that must be provided to program participants in order to conduct a related interpretive program.

An individual expressed concern that NPS should not allow non-profit organizations to compete with concessioners. However, some competition of this nature does exist and the 1998 Act does not preclude non-profit organizations from being concessioners. In fact, several existing NPS concessioners are non-profit organizations.

An individual commented on the sentence in this section that states that the Director may not authorize the conduct of visitor services by any means other than a concession contract except as may otherwise be authorized by law. The individual interprets this to mean that under this section visitor services may not be authorized under an historic lease entered into pursuant to Section 111 of the National Historic Preservation Act, as amended. The individual objects to this result. However, the sentence to which the individual objects reflects an express statutory requirement contained in Section 403 of the Act. NPS points out that many historic buildings in areas of the national park system are utilized for visitor service purposes by concessioners. NPS also notes that it is in the process of drafting regulations for the leasing of property under Section 802 of the 1998 Act. These regulations, which NPS intends, as a matter of policy, to publish for public comment, will address the scope of activities that may be authorized under NPS leases as opposed to concession contracts.

This subsection also has been modified to more closely track the language of the 1998 Act with respect to the fact that, unless otherwise authorized by law, concession contracts

are to be utilized to authorize the provision of necessary and appropriate accommodations, facilities and services to park area visitors ("visitor services").

#### *Section 51.2 What Is the Policy Underlying Concession Contracts?*

A comment stated that the policies for permitting visitor services in park areas should require a "balanced and diverse mix" of prices for services. NPS supports the concept that visitor services should encompass a mix of services (e.g., moderate and low cost accommodations in addition to more expensive facilities). However, Section 51.2 as written paraphrases the statutory policies on visitor services set forth in Section 402 of the Act. NPS considers that decisions as to the scope of services to be authorized under concession contracts should be developed on a case-by-case basis through planning under the general guidance of Section 402 of the Act.

Another comment stated that Section 51.2 should require consideration of the factors specific to the park area to be affected. NPS considers that this thought is implicit in Section 51.2, as the findings required by Section 402 of the Act necessarily must be made on a park-by-park basis.

An individual commented that removal of concession facilities from a park area might damage the park more than leaving the facility there. Again, NPS considers that determinations as to what are necessary and appropriate visitor services, including the possible removal of existing facilities, must be made on a case-by-case basis.

A comment stated that there is no clear definition of visitor services contained in the regulations. However, NPS considers that the visitor services definition (as modified) contained in Section 51.3 in the final rule provides a clear definition of visitor services. The comment also states that a United States Post Office should be considered as providing visitor services and therefore, apparently must be awarded a concession contract. NPS, however, does not consider Post Offices as concession operations within the meaning of the 1998 Act. Finally, the comment states that non-profit cooperating associations that provide visitor services should be subject to the requirements of Section 51.2. NPS notes that all visitor services provided in park areas under the authority of the 1998 Act are subject to the requirements of Section 51.2.

#### Subpart B—General Definitions

##### *Section 51.3 How Are Terms Defined in This Part?*

A number of comments were made concerning the definition of terms used in the regulations. Some of these comments, however, in fact were directed at underlying substantive issues, particularly the repeal of the 1965 Act's preference in renewal (discussed under General Comments) and the scope of a preference in renewal under the 1998 Act (discussed under Subpart E). The comments that specifically concerned the wording of the definitions *per se* are as follows.

##### The "1965 Act"

A comment stated that the words "as amended" should be added. However, the 1965 Act, although repealed by the 1998 Act, was never amended.

##### "Concession Contract (or Contract)"

The general concessioner organization requested clarification of this definition with respect to when a concession contract can be something other than a written agreement. NPS has deleted the phrase "unless otherwise indicated in this part" in response to this comment.

The general concessioner organization also asked NPS to clarify its position regarding circumstances where an existing concessioner may continue to operate after the expiration of a concession contract. Particularly, the comment requested NPS to make clear that (i) an incumbent concessioner is not required to continue to operate after the expiration of its contract; (ii) that if the concessioner does not choose to continue to operate, NPS must honor the obligations of the expired contract; (iii) that if the concessioner does continue to operate the continuation is to be on the same terms and conditions as the expired contract unless otherwise agreed by the parties; and (iv) the concessioner, if it continues to operate, "shall not be placed in any worse economic position upon the commencement of the new contract than the concessioner would have been had the new contract commenced upon the original expiration date of the prior contract."

NPS considers that the first three statements must be examined in the context of particular contracts and need no amplification in the regulations. The last point seems to suggest that a concessioner that continues to operate after the expiration or other termination of a concession contract may be harmed economically by this action. However, as a concessioner is not obliged to continue operations upon the expiration

or other termination of a concession contract (unless the terms of a concession contract otherwise provide), a concessioner's decision to continue operations would seem to obviate any concerns about possible "economic harm" resulting from the continued operations. In any event, NPS does not consider that changes to the definition of "concession contract (or contract)" are warranted on the basis of these comments. (NPS points out that it uses the phrase "expiration or other termination" of a concession contract in this paragraph as the 1965 Act utilizes this terminology. Under the 1965 Act, the "expiration" of a concession contract is considered a form of contract termination.)

Several comments also objected to the statement in this definition that concession contracts are not contracts within the meaning of 41 USC 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations, or policies that apply only to federal service contracts or other types of federal procurement actions.

NPS has fully considered these views and disagrees with their conclusions. The Contract Disputes Act, by its terms, applies to procurement contracts. A procurement contract is a contract under which the government bargains for, pays for, and receives goods or services. *YRT Services Corporation v. United States*, 28 Fed. Cl. 366, 392, n.23 (1993).

The court in *YRT Services* concluded that an NPS concession contract for lodging facilities "did not constitute a procurement" as NPS is not paying for the [concessioner's] services but is "collecting fees in exchange for granting a permit to operate a concession business." *Id.*

Several comments on this issue discussed a series of Interior Department Board of Contract Appeals (IBCA) decisions that held that NPS concession contracts are subject to the Contract Disputes Act as procurement contracts. However, several General Accounting Office decisions take a contrary view. NPS has reviewed the IBCA decisions and notes that all but one preceded the decision of the Court of Claims in *YRT Services*, and all concern 1965 Act concession contracts, not 1998 Act concession contracts. (This final rule, issued under the terms of the 1998 Act, supercedes these IBCA decisions.)

NPS points out that the 1998 Act, unlike the 1965 Act, contains an express statement as to the purposes of NPS concession contracts:

In furtherance of the findings and policy stated in Section 402, and except as provided by this title or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize a person, corporation or other entity to provide accommodations, facilities and services to visitors to units of the national park system. (Section 403 of the 1998 Act. Emphasis added.)

This statutory provision tracks the reasoning in *YRT Services* as to why 1965 Act concession contracts are not procurement contracts. The purpose of concession contracts is not to procure goods or services for the government. Furthermore, NPS notes that the existing 36 CFR Part 51, the NPS regulations that implemented the 1965 Act, expressly state that concession contracts "are not Federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to Federal procurement actions." (36 CFR 51.1.) The Congress, in passing the 1998 Act, must be presumed to have been aware of this regulatory interpretation and the decision of the court in *YRT Services*. In fact, it appears that the inclusion of the sentence in Section 403 of the 1998 Act to the effect that concession contracts are contracts that "authorize a person to provide accommodations, facilities and services" to park area visitors is a direct confirmation of the position of the court in *YRT Services* and the NPS interpretation of the 1965 Act contained in the existing 36 CFR Part 51.1. NPS concession contracts do not procure services for the government; rather, they authorize third parties to provide services to park area visitors.

The NPS Organic Act, 16 USC 1 *et seq.*, also expressly recognizes this distinction. 16 USC 17b provides that the Secretary of the Interior is authorized to contract with persons that provide services or other accommodations to the public in national parks to furnish such services or accommodations to the Government without compliance with the 41 USC 5. 41 USC 5 is the title of the United States Code that establishes procurement contract requirements. Accordingly 16 USC 17b makes clear that if the government contracts with a concessioner to provide services and accommodations to the Government (that the concessioner is authorized to provide to the public), the contract is a procurement of services to the government otherwise subject to 41 USC 5. In addition, by implication, this authority also makes clear that a concessioner's authorization to provide goods and services to park visitors is not a procurement contract as the goods and

services are not provided to the Government.

NPS, in reviewing this issue, did consider the fact that concession contracts in one sense could be argued to result in "services" to the government, *i.e.*, that concession contracts may require the concessioner to repair and maintain government property assigned to a concessioner under the terms of a concession contract. However, these services (repair and maintenance of government property) flow from the assignment (the equivalent of a lease of government property) of property to a concessioner for use in concession operations.

In this connection, the 1998 Act expressly exempts NPS concession contracts from the application of Section 321 of the Act of June 30, 1932 (40 USC 303b), "relating to the leasing of buildings and properties of the United States," thereby permitting NPS to accept the repair, maintenance and improvement of government property from a concessioner instead of collecting cash rent for the use of the property. The legislative history of the 1965 Act (and a related 1962 law) indicates that this provision was included in the 1965 Act (and a related 1962 law) in response to a Comptroller General Opinion that concession contracts are leases. Accordingly, to the extent that the repair and maintenance of assigned property may be considered as "services" to the government, these services are recognized by the 1998 Act as an authorized function of the assignment of government property under concession contracts, not as a procurement of services for the government.

For these reasons, NPS does not consider that NPS concession contracts are subject to the Contract Disputes Act or to other statutes that apply only to federal procurement contracts. Accordingly, it has left this statement in the final rule. NPS also points out that it does not consider the solicitation of NPS concession contracts to be subject to the Competition in Contracting Act ("CICA") as it applies to procurement contracts. *YRT Services* at p. 392. In any event, even if it were determined that NPS concession contracts are subject to CICA, the express provisions of the 1998 Act describing mandatory NPS concession contracting procedures make CICA inapplicable to NPS concession contract under its own terms. 41 USC 253(a)(1)(1988).

A comment asked whether the term "concession contract" refers to "concession permits" awarded under the 1965 Act. It does, as indicated in the definition of "concession contract."

A sentence has been added to this definition in the final rule to clarify that concession contracts must include terms and conditions as are required by law, this part, or are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

#### “Concessioner”

The definition of concessioner has been modified in the final rule to track the terms of the 1998 Act.

A comment submitted by a municipality that holds a concession contract suggested that this definition be modified to make clear that municipalities may be concessioners. This is clear under the definition in the final rule. The municipality also offered to pay a higher than minimum franchise fee in consideration of not being required to compete for the award of concession contracts. NPS has not accepted this suggestion, as it is impermissible under the terms of the 1998 Act.

#### “Director”

The term “Director” has been modified in the final rule in response to comments that expressed concern that the “Director” would be the decision-maker on an appeal from a decision of the “Director.” The term Director as used in the regulations applies to the Director personally and duly delegated subordinates of the Director. In circumstances where the rule calls for an appeal to the Director, the appeal must be to a higher authority than the initial deciding official.

#### “Franchise Fee”

Several comments requested that the term “and rights” be included in this definition after the word “privilege.” NPS has not made this change as the definition of franchise fee contained in the final rule tracks the terms of the 1998 Act.

#### “Offeror”

The definition of the term “offeror” has been modified in order to make clear that an organization does not have to be formally in existence as of the time of submission of a proposal for a concession contract in order for the proposal to be considered by NPS.

#### “Possessory Interest”

A comment took issue with the sentence of this definition that states that possessory interest does not include any interest in personal property even though a prior concession contract may have provided a compensable interest in personal property described as “possessory interest.” The comment

makes the point that “this is true only to the extent that such property does not come within the definition of possessory interest” as set forth in the 1965 Act. NPS agrees with this latter statement and has modified the definition accordingly. The comment also suggests that the regulations address the circumstances of the disposition of personal property when a new concessioner is selected for award of an existing concession contract. NPS has done this in Section 51.68 of the final rule.

Other comments objected to the fact that NPS generally does not intend to include in new concession contracts provisions that require a new concessioner to purchase the personal property of a prior concessioner. NPS considers that such provisions in concession contracts are a barrier to competition as a new concessioner is required to buy equipment that it may not need and that may not be in good condition. NPS considers that the marketplace should control in this situation. A prior concessioner may sell its personal property to a new concessioner on a mutually agreeable basis. If agreement cannot be reached, the prior concessioner is free to sell its personal property on the open market. A commenter stated in this connection that the 1965 Act required that new concessioners purchase the personal property of prior concessioners. This was not the case.

#### “Preferred Offeror”

The general concessioner organization stated that the words “the Director has determined” should be stricken from this definition. The basis of the comment is that the existence of a concessioner’s status as a preferred offeror is not always subject to the Director’s discretion. However, NPS considers that the definition is accurate. The main body of the regulations describes the circumstances under which the Director may determine an existing concessioner to be a preferred offeror. A comment asked whether there ever may be more than one preferred offeror for a qualified concession contract. The answer is no as only one entity can be a concessioner under the terms of a concession contract as of its termination or expiration.

#### “Prior Concession Contract” and “Prior Concessioner”

Several comments suggested changes to these definitions. However, in consideration of these comments, NPS has determined that these definitions are not needed to understand the final

rule. The definitions have been deleted in the final rule.

#### “Qualified Concession Contract”

NPS has included in the general definitions section of the final rule for the sake of clarity the definition of a “qualified concession contract” as set forth in the text of the regulation.

#### “Qualified Person”

One comment suggested adding the word “conserve” to the phrase “protect and preserve” as used in this definition. The request is based on the statement that the word “conserve” reflects language of the 1998 Act and also points out that hunting and fishing, authorized uses in certain park areas, are not considered by some to be consistent with the concept of “preservation.” NPS has not made this change as this definition tracks the statutory description of a qualified person contained in Section 403(4)(B) of the 1998 Act. In any event, NPS considers that the statutory language was not intended to alter park area uses such as hunting and fishing where such uses are otherwise permissible.

The definition of “qualified person” in the final rule has been modified in accordance with the changes to the definition of the term “concessioner” and shortened without changing its meaning.

#### “Right of Preference”

NPS has modified the definition of “right of preference” to more closely track Section 403(7)(C) of the 1998 Act in response to comments concerning the right of preference as described in the proposed regulations.

A comment suggested deletion of the last sentence of this definition, stating that it suggests that NPS can “defeat” a right of preference by changing contract terms and conditions. NPS has not made the requested change. The questioned sentence only states that a right of preference does not give a preferred offeror the right to establish or negotiate the terms of a new concession contract. See the discussion under Section 51.33 with respect to the right of NPS to establish the terms and conditions of new concession contracts.

#### “Visitor Services”

A comment asked NPS to explain why this definition is limited to accommodations, facilities and services that are provided for a fee or charge as this limitation suggests that services provided free to guests are not permissible. This was not the intention of the definition and it has been clarified accordingly. The definition

also has been clarified to state that activities that are “necessary and appropriate” are to be determined by the Director under the guidance of Section 402 of the Act. The definition has been further modified to more closely track the terms of the 1998 Act and to clarify that NPS itself may provide “visitor services,” *e.g.*, operate campgrounds for visitors, as indicated in this section in the proposed regulations.

Another comment suggested that the regulations should contain language that advises NPS managers as to how the courts have interpreted the term “necessary and appropriate” as used in this definition in litigation concerning the 1965 Act. NPS has not accepted this suggestion. Decisions as to what visitor services are “necessary and appropriate” for a particular area are necessarily made on a case-by-case basis by NPS with public participation in planning processes as appropriate. NPS takes into account relevant judicial decisions in its planning decisions. However, planning decisions are fact driven. Every park area is different with respect to resources and the types of visitors and visitor needs and desires.

#### “Responsive Proposal”

NPS has moved the definition of “responsive proposal” from Section 51.15 of the proposed regulations to the general definitions section of the final rule for the sake of clarity. It has also modified the definition of “responsive proposal” to make clear that the determination is made by the Director.

#### Subpart C—Solicitation, Selection and Award Procedures

##### *Section 51.4 How Will the Director Invite the Public To Apply for the Award of a Concession Contract?*

One comment suggested that the regulations should include procedures and guidelines regarding the contents and scope of a prospectus. NPS considers that the regulations, in accordance with the requirements of the 1998 Act, adequately describe the contents of prospectuses.

This section, in response to a comment from an attorney who argued that rights of an existing concessioner may be impacted by the issuance of a prospectus, has been modified by NPS to clarify that the determinations contained in prospectuses and/or in proposed concession contracts published with prospectuses do not become final NPS administrative decisions until such time as a concession contract is awarded in accordance with this part. NPS also

notes that Section 51.47 in the final rule provides an appeal right for concessioners regarding preferred offeror status. Finally, the final rule precludes issuance of a prospectus for a new concession contract earlier than eighteen months prior to the expiration of an existing concession contract that the new contract is to replace, thereby assuring that an existing concessioner does not have to compete for a new contract in circumstances where assessment of the feasibility of the terms and conditions of the new contract would be unduly speculative.

##### *Section 51.5 What Information Will the Prospectus Include?*

The general concessioner organization requested that the words “and enhancement” be deleted from this section for the reasons discussed in the commenter’s statements under sections 51.20 and 51.21. In those sections, the commenter generally objected to the use of environmental enhancement measures as a factor in the selection of concession contract proposals. For the reasons discussed by NPS under those sections, NPS does not agree with the position of the commenter. However, NPS has modified this section to delete references to environmental “enhancement.”

The general concessioner organization objected to the use of the term “minimum” as to the capital investment required by an offeror as referred to in Subsection (a)(5) on the grounds that the 1998 Act does not contain this modifier and its use suggests that NPS is providing itself discretion, “contrary to the law,” to accept proposals that offer a higher capital investment than the “minimum.”

The comment is correct in stating that the 1998 Act does not contain the word “minimum.” Rather, the Act states as follows in pertinent part: “any facilities, services, or capital investment required to be provided by the concessioner.” NPS does not consider that this section of the Act, referring to capital investment required to be provided by the concessioner, may reasonably be interpreted as forbidding NPS from taking into account in the selection of proposals for a concession contract the relative amount of capital investment an offeror may be willing to provide. Moreover, the amount of capital an offeror is prepared to invest in the park is demonstrably an appropriate proposal selection concern. The level of concessioner investment in many cases may directly relate to the quality of the visitor facilities to be provided or measures to be taken with respect to the protection, conservation and

preservation of the resources of the park area.

NPS has included the phrase “if any” in the final rule in response to a comment that stated that many NPS concession contracts do not require capital investment by the concessioner.

A comment suggested that the term “fixed” be included with respect to “minimum” franchise fees. NPS has not made this change. A franchise fee can be in the form of a fixed fee, a percentage of gross receipts, or other measures as may be described in a concession contract. The regulation does not need to amplify this further.

A comment suggested that the word “ensure” be changed to “assure” in Section 51.5(a)(4). NPS has not made this change as the word “ensure” comes from Section 403 of the 1998 Act.

A comment stated that subsection (e) should make clear that any subfactor set forth in a prospectus must be a subset of the principal selection factor to which it relates. NPS agrees with this comment but considers the regulation is clear in this regard.

A comment suggested that subsection (f) be clarified to acknowledge that some information provided to the Director by concessioners is not subject to public release as confidential. NPS has not accepted this suggestion for the reasons discussed under section 51.113. However, NPS has amended this subsection to fully track Section 403(3)(G) of the 1998 Act that requires NPS to include in concession contract prospectuses:

Such other information related to the proposed concession operation as is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

In addition, NPS has moved to this subsection from Section 51.113 (which has been deleted in the final rule), certain information that NPS considers is necessary (where applicable) to allow for the submission of competitive proposals.

A comment suggested that the “estimate” of leasehold surrender interest value to be contained in a prospectus should be provided by the existing concessioner. NPS has not accepted this suggestion. It would be an obvious conflict of interest for an existing concessioner to estimate the value of its own leasehold surrender interest for competitive selection purposes.

A comment suggested that prospectuses should set forth all of the fees a concessioner may be required to pay, not just franchise fees. NPS

considers that this section, which refers to franchise fees and other forms of consideration to be paid to NPS under the new contract, meets the concerns of this comment.

NPS has modified this section in the final rule to make clear that concession contracts may contain terms, where appropriate, incorporating measurable performance standards as suggested in general terms by commenters.

*Section 51.6 Will a Concession Contract be Developed for a Particular Potential Offeror?*

A law firm suggested a change to this section. However, as the comment refers to the "last paragraph" of this section and the section only contains one sentence, it appears that the reference to Section 51.6 was in error. NPS was not able to identify the section to which the comment was intended to apply.

A comment suggested that this section be amended to make clear that it does not preclude consultation with an existing concessioner as to the proposed content of a prospectus. NPS has amended this section to indicate that consultations with an existing concessioner may occur but that the concessioner may not be provided any information as to the content of a proposed or issued prospectus that is not available to the general public.

A comment suggested that the phrase "as they relate to the visitor services to be provided" be added after "requirements of the Director" in this section. NPS has not made this change. The term "requirements" as used in this section is not limited to visitor services requirements.

*Section 51.7 How Will Information Be Provided to a Potential Offeror After the Prospectus Is Issued?*

A comment suggested that NPS should hold meetings with potential offerors as a means to ensure that information is equally shared. NPS, in fact, routinely does hold offeror information meetings after the issuance of concession contract prospectuses, particularly with respect to larger contracts. This practice will continue under the final rule, subject to applicable administrative guidelines.

*Section 51.8 Where Will the Director Publish the Notice of Availability of the Prospectus?*

A comment suggested that NPS should also provide notice "directly to the existing concessioner, both because such concessioner is a logical bidder and because a smooth bidding process requires the incumbent to be apprised of

the timing and particulars of the offering."

NPS is unaware of any occasion where an existing concessioner was not aware of the issuance of a prospectus concerning the continuation of the concessioner's operations. NPS, therefore, does not see a need to make this change even if it was otherwise considered appropriate.

A comment suggested that the word "may" in this section be changed to "shall" in order to ensure even-handed solicitation practices. NPS has not made this change as the decision is discretionary.

A comment suggested that notice of the concession opportunity also be included in the **Federal Register**. NPS has not accepted this suggestion. Federal Register publication is expensive and may not significantly increase public awareness of the concession offering. The costs of publication outweigh the limited benefits of publication.

A comment suggested that NPS should maintain a list and notify persons who have expressed interest in concession opportunities. NPS does this now and intends to continue to do so as a matter of administrative practice.

*Section 51.9 How Do I Get a Copy of the Prospectus?*

A comment suggested that the word "may" in this section be changed to "shall." NPS has not accepted this suggestion as it generally intends to impose a fee for prospectuses only when it anticipates that a large number of requests for copies of a prospectus will be received.

*Section 51.10 How Long Will I Have To Submit My Proposal?*

A comment suggested that this section should contain guidance as to what constitutes circumstances that would make a shorter than normal response time appropriate. As circumstances may vary greatly, NPS has not made this change. However, in general, a shorter time period is appropriate for smaller concession contracts where potential offerors are likely to be local to the park area and familiar with the circumstances of the concession opportunity.

A comment also suggested that the sixty-day usual response time for submission of proposals be changed to ninety days. Another comment recommended one hundred and twenty days. NPS has not accepted these suggestions as it considers that sixty days is a reasonable response time for routine NPS concession contracting

opportunities and does not wish to unduly expand the length of the concession contracting process. In addition, NPS may, under the terms of this section, increase the time if determined appropriate.

*Section 51.11 May the Director Amend, Extend, or Terminate a Prospectus or Solicitation?*

Several comments addressed this section. They criticize the fact that the Director's right to cancel a concession contract solicitation at any time prior to award of the contract contains no guidelines as to when such a cancellation may occur and that an explanation of a cancellation is not required. One suggested that a cancellation should be only "for cause." The comments also requested an "appeal right" in the event of a cancellation. In response to these comments, NPS has included in this section a sentence describing the circumstances under which a concession contract solicitation may be cancelled. NPS has not accepted the suggestion of an "appeal right." NPS does not consider that any person has an entitlement to the issuance of a concession contract solicitation and that, therefore, the cancellation of a solicitation in and of itself, a discretionary decision by NPS as indicated in the final rule, does not affect the rights of any person. (NPS has changed the term "termination" of a solicitation to "cancellation" in the final rule as "cancellation" is the usual terminology.)

*Section 51.12 Do I Have Any Rights If the Director Amends, Extends or Terminates a Prospectus or Solicitation?*

Several comments addressed this section. One suggested that an amendment to a concession contract solicitation should only be for "cause." This, of course, is the case. An amendment would be made by NPS only if circumstances called for an amendment. Another comment suggested that the phrase "except for any existing rights" be included at the beginning of this section. However, NPS does not consider that this section as written could be construed as affecting the existing legal rights of any person, as discussed under the previous section.

The final rule has combined Section 51.12 with Section 51.11 for the sake of clarity. Section 51.12 has been deleted in the final rule.

*Section 51.13 (Section 51.12 in the final rule) Are There Any Other Procedures That I Must Follow or That Apply to the Solicitation or to the Selection of the Best Proposal?*

Several comments expressed concern that NPS, by referencing a lottery system in this section, intended to generally select concessioners by lottery. This is not the case. The use of a lottery was intended to apply only in very limited circumstances. However, in light of other changes made in the regulations with respect to selection procedures (discussed in the next several paragraphs), NPS does not consider that mention of a lottery system is appropriate in the final rule. Reference to it has been deleted from the regulations.

A number of comments criticized NPS for not including in the proposed regulations "simplified procedures for small, individually-owned, concession contracts" as called for by Section 403(1) of the 1998 Act. This section of the proposed regulations, however, did incorporate such simplified procedures, stating that the Director will include simplified solicitation and/or information requirements in prospectuses for concession contracts that are likely to be awarded to a sole proprietorship. NPS notes that, because of the express statutory requirements of the 1998 Act prescribing concession contract solicitation procedures, it is not possible to establish in general a greatly simplified regulatory solicitation procedure for smaller concession contracts. NPS does not consider that Section 403(1) was intended to repeal by implication the numerous statutory requirements regarding the selection process set forth in the 1998 Act. Rather, NPS considers that the simplified procedures referred to in the 1998 Act relate to administrative practices utilized by NPS and any regulatory procedures NPS may adopt in furtherance of the 1998 Act. In any event, NPS considers that the basic elements of the 1998 Act with respect to solicitation procedures, *i.e.*, issuance of a prospectus, evaluation of proposals under specified criteria, and selection of the best proposal, necessarily have to be contained in any selection process, whether or not legally required. Accordingly, the greatest opportunity for simplified procedures is with respect to the information requirements of prospectuses.

NPS, in the development of prospectuses for smaller concession contracts, intends to limit as appropriate the information that needs to be submitted by offerors and the number of

subfactors and related information requirements applicable to the principal selection factors. In this way, although the solicitation process will follow the statutory requirements for concession contracting, the paperwork burden will be significantly reduced for smaller concession opportunities.

In addition, NPS has provided for the possible elimination with respect to smaller concession contracts of the secondary selection factor (quality of environmental program) contained in Section 51.17(b)(1) of the final rule, thereby simplifying the selection procedures for smaller concession contracts. NPS has made corresponding changes to Section 51.12 in the final rule to make clear its intentions with respect to simplified procedures for smaller concession contracts.

A municipality that holds a concession contract suggested that the term sole proprietorship be amended to include local governments. NPS does not consider this lawful under the Act as the term "individually owned" clearly refers to a business, not a governmental unit.

*Section 51.14 (Section 51.13 in the final rule) When Will the Director Determine If Proposals Are Responsive?*

A comment suggested that a time limit be adopted as to when NPS must determine a proposal to be non-responsive. NPS has not accepted this suggestion in light of the varying complexity of concession contract proposals. This section has been changed in the final rule to make clear that a determination of responsiveness must be made prior to or as of the selection of the best proposal.

*Section 51.15 (Deleted in the final rule) What Is A "Responsive Proposal?"*

A comment suggested that the definition of a responsive proposal needs to be more clearly articulated. NPS has made a change to the definition (discussed under Section 51.3). The commenter's real concern, however, appears to be that the commenter considers that the requirement for submission of a responsive proposal deprives offerors of the ability to object to any of the terms of the solicitation or to submit a conditional proposal. The commenter objected to this as it wishes to have the right to disagree with the terms of the solicitation or the new concession contract, in other words, to disagree with the minimum requirements of the prospectus. NPS does not agree with this point of view. NPS determines the nature and scope of proposed new concession opportunities. They are not a matter of negotiation

with prospective offerors. This is made clear by Section 403(3)(A) of the 1998 Act that states that a prospectus shall include the "minimum requirements" of the solicited contract. The 1998 Act also describes certain of these "minimum requirements" in Section 403(3).

However, NPS, in response to this comment, has added a sentence to Section 51.15 in the final rule that makes clear that offerors are permitted to suggest changes to the terms and conditions of a concession contract so long as they agree to be bound by the terms and conditions of the solicitation.

NPS has moved the definition of "responsive proposal" in the final rule to the general "definitions" section, Section 51.3, and deleted this section in the final rule.

*Section 51.16 (Section 51.14 in the final rule) What Happens If No Responsive Proposals Are Submitted?*

\* \* \* \* \*

*Section 51.17 (Section 51.15 in the final rule) May I Clarify, Amend or Supplement my Responsive Proposal After It Is Submitted?*

A comment suggested that this section be amended to delete the word "responsive." The word has been eliminated from the first sentence. NPS considers, in agreement with the comment, that the Director should have the discretion (but not the obligation) to allow an offeror to clarify a non-responsive proposal. NPS has added a sentence to this section explaining that "clarification" of a proposal refers to making clear any ambiguities that may have been contained in a proposal, not a right to substantively amend or supplement the terms of a proposal.

A comment suggested that permitting amendment of proposals after the submission date may lead to an auction of concession contracts. NPS has not changed the regulation in response to this comment as the overall terms of the regulations preclude an "auction" of concession contracts. However, in response to this comment, NPS has added a sentence to clarify that permitted amendments of proposals are limited to correcting aspects of proposals resulting from a general failure of offerors to understand requirements of the prospectus or to generally fail to submit required information. Amendments are not permitted for the purpose of allowing a particular offeror or offerors to correct proposal deficiencies that were not generally common to all proposals received.

*Section 51.18 (Deleted in the final rule)  
How Will the Director Select an Offeror  
for Award of the Concession Contract?*

As discussed in the response to "General Comments," a number of comments were received that criticized the evaluation and selection process that was contained in the proposed regulations. The comments generally focused on three concerns. The first was that the evaluation was not based on a numerical rating system. The second was that the "tie-breaker" concept was inappropriate and inconsistent with the intentions of the 1998 Act with respect to franchise fees. The third was that the proposed regulations gave environmental aspects of proposals undue weight in the selection process. NPS has modified the regulations to accommodate all of these concerns as discussed below.

In this connection, Section 51.18 has been deleted in the final rule. The method under which the Director will select the best proposal in response to a prospectus is contained in Section 51.16 in the final rule (as discussed further under Section 51.21).

A comment suggested that NPS should not permit members of evaluation panels to be NPS officials that are acquainted with the incumbent concessioner. NPS has not accepted this suggestion. NPS evaluation panels usually include officials from the applicable park area in order to ensure that the circumstances of the park area are understood in the evaluation process. The fact that an official may be acquainted with the existing concessioner is not considered inappropriate by NPS. The contract is awarded to the offeror that submits the best overall proposal.

*Section 51.19 (Deleted in the final rule)  
How Will the Director Select the Best  
Proposal?*

This section also has been deleted in the final rule. Section 51.16 of the final rule describes the method for selecting the best proposal.

*Section 51.20 (Section 51.17 in the final  
rule) What Are the Five Principal  
Selection Factors?*

Several comments objected to the fact that this section and other sections refer to five principal selection factors instead of four as mentioned in the 1998 Act.

The regulations encompass five principal selection factors because one of the statutory factors, Section 403(5)(i), is, in fact, a double factor. This selection factor in the 1998 Act refers to "the responsiveness of the proposal to

the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates." (Emphasis added). There are unmistakably two distinct factors here, resource preservation and appropriate visitor services. For the sake of clarity, the regulations separate them. To the extent that the commenters may consider that this clarification somehow results in a change to the relative weight of the selection factors, NPS notes that the 1998 Act gives NPS discretion to weight the principal selection factors. NPS could have achieved the same result as splitting selection factor (1) into two factors by doubling the weight given to principal selection factor one so that both of its distinct elements would be of equal weight to the other selection factors. NPS considers, however, that better clarity is achieved by separating principal selection factor (1) into two factors. NPS has changed this section to refer to selection factors in general to conform to changes made to the secondary factor section of the proposed rule in response to public comments.

This section has also been changed in the final rule to delete reference to environmental enhancement as an element of principal selection factor (1) as requested by several comments. As discussed below, the matter of the "environmental enhancement" content of proposals is an element of a secondary factor in the final rule, also as requested by several commenters. See Section 51.17(b)(1). NPS has also made a change to this secondary factor by permitting it to be excluded from prospectuses in certain circumstances. See the discussion under Section 51.13. It has also rephrased the term "environmental enhancement" programs for clarification purposes. NPS considers that a secondary selection factor that is concerned with the conservation of resources in general is appropriate. Park areas are not immune from general environmental impacts. Progressive environmental management practices such as energy conservation and recycling ultimately assist in the preservation of park resources as well as in general environmental enhancement.

This section has also been changed in the final rule to delete the word "quality" in selection factor two as suggested by a commenter as the word "quality" is not contained in the related statutory provision. NPS, however, does not consider that this change results in any change in the meaning of the selection factor.

NPS, in response to a comment, included the phrase "if any," after the

term franchise fee in the text of principal selection factor (5) to reflect the fact that it is possible that a concession contract will not call for a franchise fee in special circumstances. NPS did not add the phrase "and/or other forms of financial consideration" to the last two sentences of this selection factor as requested by a commenter as this would be inconsistent with the statutory provision concerning franchise fees.

A comment requested that the word "facilities" be included in the selection factor concerning past experience. NPS has not made this change as the term used in the regulation, "visitor services," is defined in Section 51.3 as including "facilities."

NPS has modified Section 51.20(a)(5) (Section 51.17(a)(5) in the final rule) to delete its last two sentences as unnecessary in light of the terms of principal selection factor (5) (which repeat the statutory mandate of Section 403(5)(iv) of the 1998 Act regarding consideration of franchise fees in awarding concession contracts).

A comment suggested that the term "park area" is ambiguous as used in this section, i.e., that it is not clear whether it refers to areas outside of park boundaries. NPS has not made a change in response to this comment. The term is generally intended to apply to property within park boundaries.

A commenter suggested that an offeror should be rated on its commitment to further the goals of the park area and to operate in a manner that is supportive of the ideals of the park. NPS considers that these interests are implicit in the established selection criteria.

Finally, several comments requested changes in the wording of the principal selection factors to reflect particular interests such as historic preservation, environmental enhancement and the circumstances of particular park areas. NPS, however, has retained the terms used by the statute as appropriate for the general regulations. Particular prospectuses can address special concerns and the circumstances of the applicable park area through subfactors or secondary factors.

*Section 51.21 (Section 51.16 in the final  
rule) How Will the Director Apply the  
Five Selection Factors and Select the  
Best Proposal?*

This section has been modified by NPS to incorporate a numerical scoring system while retaining the basic approach of evaluating on the basis of narrative analysis. A numerical scoring system was recommended by a number of commenters (discussed under

“General Comments”). Under the numerical scoring system, the first four principal selection factors may score as high as five points each. The fifth principal selection factor, the franchise fee offered, may only receive up to four points, reflecting that, pursuant to the 1998 Act, revenue to the United States is subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates. The secondary factor concerning “environmental enhancement” activities (rephrased for clarification in the final rule) may receive up to three points. Any additional secondary factors contained in a prospectus may not have an aggregate score of more than three total points.

One comment suggested that the basis of a numerical point score system should be 100 points. However, NPS considers that evaluation of proposals on the basis of such a large scale results in scores that are difficult to explain, e.g., why did this proposal get rated as 74 while this one received a score of 76? NPS believes that scoring proposals on a lower scale such as contained in the final rule, based on the required narrative explanation of the basis for the score, leads to more credible, objective evaluations. However, the point score system described in the final rule does permit an evaluation panel to award whole number or fractional points, e.g., 2 points, 2.5 points, etc., as appropriate in the circumstances of a particular evaluation. A comment suggested that the same member of an evaluation panel evaluate all proposals with respect to particular selection factors. NPS has not accepted this suggestion. To the contrary, it may be better to have several persons evaluate varying elements of a proposal.

Another comment suggested that the franchise fee offered not be considered in an evaluation of proposals unless two or more proposals were determined as substantially equal. This suggestion has not been accepted as contrary to the intentions of the 1998 Act.

*Section 51.22 (Deleted in the final rule) When Will the Director Apply Secondary Factors?*

This section has been deleted from the final regulations as unnecessary in light of the changes made to sections 51.20 and 51.21. However, the last sentence of this section has been included in Section 51.17(b)(2) in the final rule. In addition, NPS has included reference to minority and women-owned businesses in this section in the

final rule consistent with NPS policy and in response to a suggestion to this effect from a commenter. In connection with this section, NPS recognizes that minority, women and Native American-owned businesses are severely under-represented in the concessioner community. To remedy this, NPS strongly encourages minority, women and Native American-owned businesses to apply for concession contracts. In order to encourage this, NPS will provide interested persons and firms maximum allowable information and assistance by:

(1) Making reasonable efforts to include on all source lists of potential concessioners, minority, women and Native American-owned firms that have expressed interest in becoming a concessioner;

(2) Seeking the advice and assistance of the Minority Business Development Agency in locating and counseling these firms, as well as providing public information on concession opportunities to these firms; and

(3) Providing advice and counseling to these firms on how to participate in concession contract opportunities.

*Section 51.23 (Deleted in the final rule) How Will the Director Select the Best Proposal If Two or More Proposals Are Assessed as Substantially Equal after the Director Has Applied the Principal and Secondary Factors?*

This section has been deleted from the final regulations in light of the changes made to Sections 51.20 and 51.21. Section 51.16(c) of the final rule describes how the Director will select the best proposal in the event that two or more proposals receive the same highest score after evaluation under Section 51.16(a) and (b).

NPS notes, as discussed in “General Comments,” that a number of comments objected to the “tie-breaker” concept contained in this and other sections of the proposed regulations. A concern in this connection was that the tiebreaker concept might lead to franchise fee bidding. The tiebreaker concept has been deleted from the final rule, both with respect to environmental enhancement and franchise fee considerations. In the event that two or more proposals receive the same highest numerical score after evaluation by NPS, the final rule provides that the Director will select as the best proposal the proposal (among those with the same highest score) that the Director considers will, on an overall basis, best achieve the purposes of the 1998 Act. This change is consistent with Section 403(5) of the 1998 Act that calls for NPS to select the best proposal after

considering the statutory principal selection factors and any secondary factors that may be included in a prospectus.

*Section 51.24 (Section 51.18 in the final rule and retitled) What Happens If a Proposal Is Rated as “Unacceptable” Under Any of the First Four Principal Selection Factors or If the Offeror Is Not a Qualified Person?*

A comment suggested that this section should expound upon or give examples as to when a proposal may be considered unacceptable.

NPS, in response to this and other criticisms, has modified this section in the final rule to delete its first sentence and to add to it the balance of the provisions of Section 403(4)(B) of the 1998 Act, i.e., that a proposal must be rejected if it is not responsive to the general objectives of resource protection and proper visitor service. The modified provision, in addition to inclusion of the responsive proposal requirement, contains only the requirements of Section 403(4)(B) of the 1998 Act. NPS does not consider that further amplification of this statutory provision is necessary.

*Section 51.25 (Section 51.19 in the final rule) Must the Director Award the Concession Contract That Is Set Forth in the Prospectus?*

A comment made the point that the 1998 Act does not permit material amendments to the terms and conditions of a concession contract as set forth in the prospectus. NPS has amended this section in the final rule to reflect this comment.

*Section 51.26 (Section 51.20 in the final rule) Does This Part Limit the Authority of the Director?*

Several comments expressed concern about this section, asserting that the Director should not have unconditioned authority to determine when to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms. NPS, however, considers that the provision is a proper statement of its authority and responsibility for the administration of concession contracts under the terms of the 1998 Act. Section 404(10) of the 1998 Act states that “nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.”

*Section 51.27 (Section 51.21 in the final rule.) When Must the Selected Offeror Execute the Concession Contract?*

A comment suggested that the time frame for execution of the concession contract by the concessioner should be specified as thirty days in all cases. NPS does not agree with this, as, given the varying type and scope of concession contracts, it needs to retain flexibility as to the time for execution by the selected offeror.

A comment suggested that if the selected concessioner does not receive a concession contract from NPS within ninety days from the date of the selection of the best proposal, or within ten days of the commencement of the contract period, whichever is later, it should have the right to withdraw its proposal. NPS has not included the ninety-day suggestion in the final rule because there may be circumstances in which NPS would not be able to issue a final contract in the specified time.

*Section 51.28 (Section 51.22 in the final rule and retitled.) After the Selected Offeror Executes the Concession Contract, When May the Director Execute the Concession Contract?*

A comment asked whether the gross receipts referred to in this section are the gross receipts of the concessioner or the franchise fees received by NPS from concessioners. The gross receipts referred to in this section are the gross receipts of the concessioner.

A sentence has been added to this section in the final rule stating that the NPS may execute a concession contract that is not required to be submitted to the Congress at any time after selection of the best proposal and execution by the concessioner.

**Subpart D—Non-Competitive Award of Concession Contracts**

*Section 51.29 (Section 51.23 in the final rule) May the Director Extend an Existing Concession Contract Without a Public Solicitation?*

A comment stated that this section should not be used to delay competitive bidding for existing contracts that have already been extended. NPS notes, however, that it does not intend to unduly delay competitive solicitations of concession contract proposals for a concession contract and that the extension authority provided by this section is limited as to when it may be exercised, *i.e.*, that the extension is necessary to avoid interruption of visitor services. NPS, however, has added a sentence to this section making clear that extensions under the 1998 Act in excess of an aggregate of three years

are not permissible. It has also added a sentence requiring that notice of an extension be must published in the **Federal Register** thirty days in advance of the award of the extension (except in emergency situations).

Another comment suggested that this section be amended to provide the public with an opportunity to comment on the proposed extension of any concession contract. NPS notes that the 1998 Act does not require public notice in these circumstances. Moreover, NPS considers that public comment is not appropriate in light of the limited term of extensions and the limited circumstances in which a concession contract may be extended non-competitively.

*Section 51.30 (Section 51.24 in the final rule) May the Director Award a Temporary Concession Contract Without a Public Solicitation?*

A comment made the same point discussed above regarding public notice of an intention to extend concession contracts. NPS has also accepted the suggestion of requiring public notice of an intention to award a temporary concession contract. A sentence to this effect has been included in the final rule.

NPS has also clarified this section to make clear that that temporary concession contracts cannot be extended and may be issued for only a three year term in the aggregate with no ability to issue further temporary contracts for the continuation of the related visitor services. In addition, this section has been clarified to make clear that temporary concession contracts may not be awarded to continue to authorize the continuation of visitor services provided under an extended concession contract.

However, Subsection (b) of this section in the final rule makes a special exception to this latter requirement. It permits the Director to award a temporary concession contract to continue the visitor services provided by an extended concession contract if the concession contract was in effect as of November 13, 1998, and had been extended by that date or was due to expire by its terms by December 31, 1998, and was subsequently extended. This special rule is needed because more than 280 NPS concession contracts in effect as of November 13, 1998, were already extended or were due to expire by December 31, 1998. Due to limited resources, it may not be possible for NPS to award new concession contracts to replace all of these extended contracts within the three year extension period permitted by the 1998

Act. The Director, however, may not award a temporary concession contract in these circumstances unless the Director personally determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary contract have been considered and found infeasible. The section in the final rule also requires the Director to follow the notice procedures set forth in 51.29 in the final regulations before awarding a temporary concession contract in these circumstances.

The general concessioner organization objected to the last sentence of this section that concerns the status of the holder of a temporary concession contract with respect to a preference in renewal. The comment stated that this section should be amended to state that if a "permanent" concessioner is extended on a temporary basis by a temporary concession contract that its right of preference, if any, will be recognized when the temporary contract expires. NPS concurs with this suggestion (except for its anomalous reference to a "permanent" concessioner) and has amended this section accordingly.

*Section 51.31 (Section 51.25 in the final rule) Are There Any Circumstances in Which the Director May Award a Concession Contract Without Public Solicitation?*

A comment stated that NPS should include a substantive discussion as to how it intends to interpret and administer this section. NPS notes in this connection that the language of the section tracks a related statutory provision, Section 403(11)(C) of the 1998 Act. Given that it is impossible to describe prospectively what "extraordinary circumstances" may exist under which "compelling and equitable considerations" require the award of a concession contract to a particular person in the public interest, thereby permitting the non-competitive award of a full term concession contract, NPS does not believe that further regulatory guidance is generally practicable. However, NPS notes that the legislative history of the related statutory provision makes clear that the occasions when NPS determines that compelling equitable circumstance warrant award of a concession contract to a particular party should be extremely rare. The legislative history further states that "indisputable equitable concerns are to be the determinant of such circumstances." S. Rep. No.105-202, at p. 33 (1998).

NPS has included this last sentence in the final rule. It has also made a change

to clarify that the required notice must identify the person to whom the contract is to be awarded. In addition, it has changed the notice period in the final rule to sixty days. Finally, the final rule requires that the Secretary of the Interior approve any such contract award in addition to the Director.

A local government that is a concessioner (along with numerous comments from individuals in support of the position of the local government) suggested that this section be amended to permit non-competitive awards of concession contracts to governmental entities. NPS does not consider this to be within its legal authority under the Act even if otherwise appropriate.

Another comment requested that this section be clarified to make clear what official initiates a determination to award a concession contract under this authority. Under current internal delegations, the initiating official generally would be the Superintendent of the park area in question. However, no amendment is needed in this regard, as the regulations make clear that the term "Director" applies to subordinates of the Director with appropriate delegated authority.

One commenter requested that a clear direction be given as to whom it should contact in order to obtain the award of a concession contract under this section. The comment implies that a person has a right to a non-competitive award of a concession contract. This is not the case. The award of a contract under this section is in the discretion of NPS under the limited circumstances described in this section.

#### Subpart E—Right of Preference

As discussed above, a number of comments were received concerning this subpart to the effect that it fails to recognize that existing concessioners have a contractual right to a preference in renewal under 1965 Act concession contracts. The following discussion of comments relates only to the substance of procedures relating to a right of preference under the 1998 Act, not as to whether existing satisfactory concessioners under 1965 Act concession contracts have a contractual right of preference in renewal (discussed under "General Comments").

NPS has added in the final rule for clarity a new section (Section 51.27) explaining what a right of preference is under the 1998 Act (in accordance with the definitions in Section 51.3). NPS has also split Subpart E of the proposed regulations into two subparts in the final rule, Subpart E concerning the operation of a right of preference and Subpart F describing how a

concessioner obtains a right of preference. NPS has also rearranged the order of the sections as contained in the proposed regulations to conform to the content of the new subparts as contained in the final rule. These changes are editorial, not substantive.

#### *Section 51.32 (Section 51.50 in the final rule and retitled) Does the Existence of a Preferred Offeror and a Possible Right of Preference Limit the Authority of the Director to Establish the Terms of a Concession Contract?*

A comment stated that this section gives NPS unilateral authority to modify the terms of existing concession contracts. NPS considers this an obvious misreading of this section but has added the word "new" to this section to resolve any ambiguity in this connection.

#### *Section 51.33 (Section 51.36 in the final rule) What Three Conditions Must Be Met Before the Director Determines That a Prior Concessioner is a Preferred Offeror?*

Several comments expressed concerns about this section to the effect that it provides NPS the ability to deprive a concessioner of a right of preference by amending the facilities and services authorized by a new concession contract to materially differ from those authorized by the prior concession contract. Although this was not the intention of NPS, the concern has been addressed in the final rule.

To understand the issue, the relevant provisions of the 1998 Act must be examined. The 1998 Act states as follows in pertinent part about the right of preference:

As used in this title, the term preferential right of renewal ["right of preference" as defined in the proposed regulations and final rule] means that the Secretary of the Interior, subject to a determination by the Secretary that the facilities or services authorized by a prior concession contract continue to be necessary and appropriate within the meaning of section 402, shall allow a concessioner qualifying for a preferential right of renewal the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal for a proposed new concession contract which authorizes the continuation of the facilities and services provided by the concessioner under its prior contract. Section 403(7)(c) of the 1998 Act. (Emphasis added).

In addition, Section 403(10) of the 1998 Act states:

(10) Nothing in this section shall be construed as limiting the authority of the Secretary of the Interior to determine whether to issue a concession contract or to establish its terms and conditions in

furtherance of the policies expressed in this title.

Accordingly, a right of preference under the 1998 Act only exists if the new concession contract "continues" the facilities and services provided under a prior concession contract. In this connection, NPS clearly has the authority under Section 403(10) of the 1998 Act to establish the terms and conditions of new concession contracts in furtherance of the purposes of the 1998 Act, even if any changes made may mean that the facilities and services authorized under a prior concession contract are not continued under a new concession contract. The concern of the commenters is that NPS will abuse this authority in order to deprive incumbent concessioners of a right of preference.

The proposed regulations state in Section 51.33(a) that in order for an otherwise eligible prior concessioner to obtain a right of preference to a new concession contract, the new concession contract must provide only for the continuation of the visitor services authorized under the prior concession contract. In addition in this connection, the proposed regulations state that the visitor services to be continued under the new contract may be expanded or diminished in scope but may not materially differ in nature and type from those authorized under the prior concession contract. NPS considers that this section properly reflects the intentions of the 1998 Act and properly reflects the discretion vested in NPS under the 1998 Act in this connection.

However, in response to the comments of existing concessioners, NPS has deleted the word "only" from Section 51.33(a) in conformance with Section 403(7)(C) of the 1998 Act.

This change appears in Section 51.37 in the final rule. NPS, for editorial purposes, has moved the right of preference condition regarding continuation of visitor services in a new concession contract from this section to Section 51.37. This is because the nature of the new concession contract (*i.e.*, whether it "continues" the previous visitor services) is more logically an element of determining what contracts are qualified new concession contracts. Moving this requirement to Section 51.37 in the final rule did not alter its meaning with respect to the circumstances in which an existing concessioner is entitled to a right of preference.

As a conforming amendment, Section 51.36 in the final rule has been clarified to state affirmatively that to be a preferred offeror the applicable new concession contract must be a qualified

concession contract. NPS has also modified this section in the final rule to clarify that a qualified prior concession contract for purposes of this section refers only to whether the prior concession contract was an outfitter and guide concession contract in accordance with the terms of the 1998 Act, not to the level of its gross receipts. It is possible that a prior concession contract with annual gross receipts in excess of \$500,000 may be estimated to have less than \$500,000 in annual gross receipts under the new concession contract, thereby providing a right of preference to the holder of the prior contract if otherwise qualified.

The general concessioner organization requested that a 50% test be incorporated into the regulations, *i.e.*, that if the new contract authorized the continuation of no less than 50% of the facilities and services of the prior concession contract, that the right of preference would obtain. NPS does not consider this suggestion to be within its authority under the 1998 Act as the 1998 Act states that there must be a continuation of the facilities and services, not a continuation of half of the facilities and services. Even if this change were within its authority under the 1998 Act, however, NPS considers that it would be inappropriate in light of the policies of the 1998 Act regarding competitive award of concession contracts.

NPS considers that the changes made to Section 51.33(a) in the final rule duly accommodate the concerns of the commenters.

*Section 51.34 (Section 51.37 in the final rule) How Will the Director Determine That a Concession Contract Is a Qualified Concession Contract?*

One comment suggested that the \$500,000 figure contained in this section be subject to upward adjustment based on inflation as measured by the Consumer Price Index. However, the 1998 Act states the \$500,000 figure with no reference to inflation while elsewhere the Act specifies that inflation is to be taken into account in the calculation of certain figures. NPS considers that adding an inflation adjuster to the \$500,000 figure is not authorized by the 1998 Act. If it were authorized, NPS considers that such a change would be inappropriate in light of the competitive award objectives of the 1998 Act.

Another comment stated that the term "first calendar year" as used in this section is ambiguous, *e.g.*, if a contract is awarded mid-year, one may construe the period for calculating the gross annual receipts to be less than one full

year. The comment suggested that the term the "first twelve months" be used instead of the "first calendar year." NPS has made this change.

Two comments were concerned about the fact that the period for which the \$500,000 figure will be determined is the first year of the new contract rather than the entirety of the term of the new contract. The 1998 Act provides no express guidance in this connection. NPS has considered this comment but continues to believe that, in light of the difficulty in accurately projecting future revenues, limiting the determination of gross receipts to the first year of the new contract is reasonable.

The comments also suggest that if a concession contract that is to be continued under a new concession contract had gross revenues in excess of \$500,000 in its last year, that it automatically should be considered that the new concession contract will have revenues in excess of \$500,000 in the first year of a new contract. NPS considers that, although the revenues of a prior contract must be taken into account in determining the projected revenues of the new contract, the 1998 Act clearly indicates that the \$500,000 figure relates to the revenues of the new concession contract, not to the revenues of the prior concession contract.

Another comment suggested that the \$500,000 figure is arbitrary. NPS notes that the figure was set by the 1998 Act. The same comment objected to the fact that NPS is to determine whether prospective concession contract will have gross receipts in excess of \$500,000, suggesting that the decision should be based on submittals to NPS under the prior concession contract. Further, the comment suggested that an existing concessioner should be consulted by NPS and provided an appeal if the concessioner disagrees with the decision of NPS. NPS has not accepted these suggestions in general, although it notes that a concessioner has an appeal right under Section 51.47 in the final rule as to a determination, among other matters, that a new contract will have gross receipts in excess of \$500,000. In addition, a major basis of determining the gross receipts of a new concession contract will be the annual financial reports submitted under the previous concession contract. NPS considers that the procedures set forth in the final rule are appropriate and that further procedures regarding the determination of the gross receipts of a new concession contract are unnecessary.

*Section 51.35 (Section 51.38 in the final rule) How Will the Director Determine That a Concession Contract Is an "Outfitter and Guide" Concession Contract?*

Several comments expressed a concern about this section. One asked why outfitters and guides have a preference in renewal. Outfitters and guides have a preference in renewal under Section 403(8) of the 1998 Act.

Other comments focused on the phrase "solely authorizes" in this section. The comments suggest in general that minor or incidental services additional to outfitter and guide services should be permitted by NPS without loss of a right of preference by an outfitter and guide concessioner. However, NPS notes that Section 403(8) of the 1998 Act contains the "solely authorizes" phrase which is merely repeated in the regulations. NPS, accordingly, has not made the suggested changes. However, a further discussion of a related issue is contained under Section 51.37.

*Section 51.36 (Section 51.39 in the final rule) What Are Some Examples of Outfitter and Guide Concession Contracts?*

A comment suggested that these examples include educational activities conducted by non-profit organizations. NPS has not accepted this suggestion as the examples given are of activities that are applicable whether or not the concessioner is a profit or non-profit organization.

Other comments suggested that guided mountain biking, float trips and other activities be added to the list of examples of outfitter and guide concession contracts. NPS has not done this, as the listed activities are only examples and not meant to be exclusive. Inclusion or exclusion of an activity as an example does not necessarily indicate that a particular related concession contract will be determined to be an outfitter and guide contract.

*Section 51.37 (Deleted in the final rule) What Facts and Circumstances Will the Director Take Into Account When Determining if a Concession Contract Is an Outfitter and Guide Concession Contract?*

A number of comments criticized this section with respect to its third and fourth sentences. Rather than modify these two sentences, NPS has deleted this section in light of the description of outfitter and guide concession concession contracts contained elsewhere in this subpart.

A concern was also expressed that activities of an outfitter and guide

concessioner outside of a park area should not be relevant in determining whether the concession contract is an outfitter and guide concession contract. NPS notes, however, that the relevant test is not whether activities take place outside of park area boundaries but whether activities are authorized by a concession contract. In any event, this issue is academic in light of the deletion of this section in the final rule.

*Section 51.38 (Section 51.40 in the final rule and retitled) What Are Some Circumstances That Will Indicate That Outfitter and Guide Operations Are Conducted in the Backcountry?*

A commenter was concerned that ferry boat service to an island in an urban setting might be considered as a "backcountry activity" within the meaning of this section as the service occurs in an area "remote from roads." The comment requested clarification in the regulations in this respect. NPS does not consider that this section needs clarification as it is meant to be applied on a case-by-case basis.

Another comment suggested that this section be changed to state that if an activity met any one of the factors stated in this section that it should be considered as a backcountry activity. NPS has not accepted this suggestion. The determination of whether outfitter and guide operations are conducted in the backcountry of a park area must be made on a case-by-case basis. There are no precise definitions of backcountry. Accordingly, while the regulations provide some factors that generally indicate that outfitter and guide operations are conducted in the backcountry of a park area, none of these factors can be considered as individually determinative of the issue. This section also has been modified to make clear that the determination of "backcountry" is to be made on a park-by-park basis taking into account the particular geographical circumstances of the relevant park area and the general factors identified.

The same comment suggested that the phrase that operations occur "in areas remote from roads and developed areas" be changed to "in areas not readily accessible to the public." NPS did not accept this suggestion as it considers that the term backcountry as used in the 1998 Act relates to more remote areas of a park rather than areas "not generally accessible to the public."

The same comment also suggested that a sentence be added to this section to the effect that a concession contract's operations may be determined to be conducted in the backcountry even if none of the circumstances specified in

this section were met. NPS considers that the section makes this clear, particularly as amended in the final rule.

A comment stated that the term "backcountry" might describe an experience rather than actual physical setting, suggesting that rock climbing in a front country location should be considered as a backcountry activity. NPS has not made this change as NPS considers that the 1998 Act's reference to backcountry relates to physical location, not the nature of an experience.

Another comment suggested three revisions to this section:

1. The phrase regarding search and rescue should be deleted on the basis that search and rescue could be necessary even in park areas next to a parking lot;

2. The section should state that the health and safety of park visitors is more readily ensured by the supervision of experienced outfitter and guide services, regardless of the proximity to developed areas of a park; and

3. The role of outfitters and guides in protecting park resources by supervising visitation and reducing impacts should be recognized by adding the statement "the operations assist in dispersing visitors away from signature resources, features and other areas of intense visitation."

NPS has not accepted these suggestions. With respect to the first, although it is true that in certain cases search and rescue may be necessary even in close proximity to a parking lot, this is not relevant to the meaning of backcountry in this part.

NPS considers the second two suggestions to be policy positions that are not relevant to the determination of what is backcountry within the meaning of the 1998 Act.

*Section 51.39 (Section 51.41 in the final rule) If the Concession Contract Grants a Compensable Interest in Real Property Improvements, Will the Director Find That the Concession Contract Is an Outfitter and Guide Concession Contract?*

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*Section 51.40 (Section 51.42 in the final rule) Are There Exceptions to This Compensable Interest Prohibition?*

\* \* \* \* \*

*Section 51.41 (Section 51.43 in the final rule) Who Will Make the Determination That a Concession Contract Is an Outfitter and Guide Contract?*

A comment objected to the fact that only the Director personally, or a

Deputy or Associate Director, may make the determination as to what concession contracts are outfitter and guide concession contracts. The commenter suggests that these decisions should be made at the field level under appropriate guidance. NPS, however, has not accepted this change. Given the varied nature of each park area and the judgmental factors that must be considered in making these determinations, NPS considers that making them on a national level is necessary for the sake of consistency. The term "Director" has been deleted from this section in the final rule to make clear that the Director is able to consider appeals under this section.

*Section 51.42 (Section 51.44 in the final rule) How Will the Director Determine If a Prior Concessioner Was Satisfactory for the Purposes of This Part?*

A number of comments were received in response to this section. The majority of the comments, including several from existing concessioners, supported the general intention of this section to the effect that a track record of satisfactory operations by an incumbent concessioner is a necessary precondition to entitlement to a right of preference. This intention reflects the requirements of Sections 403(8)(B)(ii) and 403(8)(C)(i) of the 1998 Act which states that an incumbent concessioner, if otherwise qualified, is entitled to a right of preference only if "the Secretary of the Interior has determined that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." Several comments stated that NPS has no authority under the 1998 Act to condition a right of preference on satisfactory performance. This view is clearly in conflict with the terms of the 1998 Act.

A comment objected to the phrase "and other relevant facts and circumstances" in subsection (a) and "among other considerations" in subsection (b) as being too vague. NPS has deleted the second phrase in the final rule in response to this comment but has left the first phrase. This is because there may be occasions when NPS becomes aware of actions of a concessioner that may result in a determination of less than satisfactory performance that were not revealed in a annual evaluations.

The general concessioner organization objected to subsection (b) on the grounds that a concessioner can be found to be less than satisfactory for any two years of the term of the contract and therefore lose its potential right of preference without an opportunity to

recapture the opportunity. To the contrary, another concessioner organization stated that this provision is "reasonable and promotes diligence to achieve acceptable performance standards." Another concessioner organization stated that the provision is "fair and appropriate to both the goals of performance-based renewal and provision of quality services."

Several comments suggested that two years of less than satisfactory performance should not automatically mean that a concessioner is determined as not satisfactory for purposes of a right of preference, *i.e.*, that the concessioner should be given an opportunity to correct less than satisfactory performance. NPS has not made this change as less than satisfactory annual evaluations are not a surprise to concessioners. There is ample opportunity to correct deficiencies that may result in less than satisfactory performance.

NPS, however, in this section in the final rule, also has made clear that the determination of unsatisfactory operation that automatically results from two or more less than satisfactory annual evaluations is not to be applied retroactively. This does not necessarily mean that a concessioner that had less than satisfactory evaluations prior to the effective date of the final rule may not be determined to have operated unsatisfactorily over the term of its contract. Rather, it only means that such a result is not required.

One comment suggested that "unsatisfactory" performance be defined as an unsatisfactory rating that is not corrected and, that, during the term of the prior concession contract, the overall rating as satisfactory or unsatisfactory be determined by averaging each year's performance rating. NPS considers these suggestions inappropriate, as they would encourage marginal or unsatisfactory performance by concessioners.

For these reasons, NPS has not changed the two-year track record requirement of this section in the final rule.

However, a number of comments particularly objected to the requirement of subsection (b) to the effect that less than satisfactory performance in either of the last two years of the term of a concession contract results in the loss of a right of preference. The comments considered this unfair. NPS has deleted the final sentence of this section in the final regulations. It agrees that the two-year less than satisfactory performance requirement should be the same with respect to all years of a contract.

A comment from a concessioner organization stated that, "overall, the Park Service has done an admirable and dedicated job" with respect to its annual performance evaluations. However, the comment, and others, suggested that the regulations should provide guidance as to the standards to be applied in annual concessioner evaluations. NPS has not accepted this suggestion. It would not be practical to include in the regulations generic standards for annual evaluations beyond the statutory standard of satisfactory performance under the terms of the applicable concession contract. NPS does point out, however, that its annual evaluation program permits a concessioner that receives a less than satisfactory rating to appeal this determination to the applicable NPS Regional Director.

NPS also notes that it is the process of considering revisions to its existing evaluation program in light of the 1998 Act and in light of NPS's intention to implement further "performance-based" contracting with respect to concession contracts.

*Section 51.43 (Section 51.45 in the final rule) Will a Prior Concessioner That Has Operated for Less Than the Entire Term of a Concession Contract Be Considered a Satisfactory Operator?*

A number of comments objected to this section and several questioned its legal basis.

The legal basis for this section is found in Sections 403(8)(B)(ii) and 403(8)(C)(i) of the Act which require as a condition to a right of preference that the Secretary determine that "the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." The intention of these sections is clear. A right of preference, which amounts to a statutory right to have greater rights to the award of a government contract than the general public, must be earned through satisfactory performance. If NPS adopted the position espoused by several of the commenters, a business could purchase a concession contract on the very last day of the term of a concession contract and thereby obtain the statutory right of preference with no demonstration whatsoever of satisfactory performance. NPS does not consider this to be the intention of the 1998 Act or sound public policy.

NPS, however, in response to these comments, has made changes to this section in the final rule. Particularly, instead of requiring that a new concessioner operate satisfactorily for two years under a contract with a term of ten years or less or four years under a contract with a term of more than ten

years, NPS has reduced these "track record" periods to one year for concession contracts with a term of five years or less and two years for concession contracts with a term of more than five years. NPS notes that the final rule in this respect is less restrictive than the comparable rule contained in 36 CFR 51.5(a) in effect prior to this final rule.

NPS considers that these changes will alleviate concerns about the ability to sell concession contracts toward the end of a contract term (in accordance with Section 408 of the 1988 Act) while providing a sufficient demonstration of satisfactory performance upon which to base a determination of a right of preference.

One comment suggested that the "track record" period of satisfactory performance under this section should not apply to contract extensions. However, the sections of the 1998 Act quoted above clearly reference extensions in this connection. In addition, the existing 36 CFR 51.5 contains these same types of "track record" requirements regarding the granting of a preference in renewal to existing concessioners. Congress must be presumed to have been aware of these existing requirements while considering the legislation that became the 1998 Act.

The same comment suggested that this section be amended to state that the first day of operation for purposes of the section be changed from the date of approval of the assignment of the concession contract until the first day of actual operations by the new concessioner. NPS has not made this change as a new concessioner lawfully cannot begin to operate prior to the approval of a contract assignment by NPS and, once the assignment is approved, the new concessioner automatically is the lawful operator of the concessioner. The final rule has also been clarified by expressly stating that the two-year track record requirement applies to new concessioners that result from assignments, including assignments of controlling interests in concessioners, as defined in this part.

*Section 51.44 (Section 51.46 in the final rule) May the Director Determine That a Prior Concessioner Has Not Operated Satisfactorily After a Prospectus Is Issued?*

A comment suggested that NPS delete this section, and, if NPS determines that performance has substantially degenerated after a prospectus is issued, that NPS terminate the contract and bring in an operator on a temporary basis. NPS, however, considers that this

section is necessary for the reasons stated in the next several paragraphs, and, with respect to the latter suggestion, considers it impracticable in light of the time it takes to terminate a contract for unsatisfactory performance. Other comments repeated the position that any requirement regarding satisfactory performance in order to obtain a right of preference is unlawful. NPS disagrees for the reasons discussed in the previous several paragraphs.

The intention of this section is to permit a determination that a concessioner has not operated satisfactorily after the date a prospectus is issued and prior to the award of a contract. It was intended to apply to situations where, after a prospectus is issued, a second less than satisfactory annual evaluation is made that precludes a preference in renewal, or, previously unknown information becomes available which causes NPS to withdraw a previous determination of satisfactory performance. The provision is necessary to avoid a less than satisfactory concessioner from exercising a right of preference by virtue of fortuitous timing of performance evaluations or by lack of knowledge by NPS of relevant information.

However, NPS has changed this section in response to the comments received to make clear the limited circumstances in which it is meant to apply.

As part of this change, NPS has included a provision that permits a performance evaluation for right of preference purposes after issuance of a prospectus on the basis of a shortened operating year if necessary to make a last evaluation of satisfactory performance for right of preference purposes prior to the selection of the best proposal submitted in response to a prospectus.

*Section 51.45 (Section 51.48 in the final rule) What Happens to a Right of Preference in Case of Termination of a Concession Contract for Unsatisfactory Performance or Other Breach?*

One commenter provided combined comments directed to this section and Section 51.44 but it appears that the comments were in fact directed to Sections 51.42 and 51.43. They have been responded to under those sections.

A comment requested that the last sentence of this section be "conformed in accordance with our comments on Section 51.44." NPS reviewed those comments but considers that the last sentence of Section 51.45 is necessary to make clear that termination of a concession contract is normally a "last resort" remedy for NPS and that,

therefore, the fact that NPS may not have terminated a concession contract for unsatisfactory performance does not limit the authority of NPS to determine that a concessioner nonetheless operated less than satisfactorily.

*Section 51.46 (Section 51.49 in the final rule) May the Director Grant a Right of Preference Except in Accordance With This Part?*

The last two sentences of this section have been deleted as unnecessary.

*Section 51.47 (Section 51.29 in the final rule) How Will I Know If a Preferred Offeror Exists?*

The final regulation contains a new section 51.28 that describes when NPS will determine that a preferred offeror exists.

*Section 51.48 (Section 51.26 in the final rule) What Solicitation, Selection and Award Procedures Described in This Part Will Apply to the Solicitation?*

One comment was directed to this section but it clearly pertained to Section 51.84, not 51.48.

*Section 51.49 (Section 51.30 in the final rule) What Must a Preferred Offeror Do Before He or She May Exercise a Right of Preference?*

The general concessioner organization took the position that an existing concessioner under a 1965 Act concession contract not only has a "continuing contractual right of preference" but also has a contractual right to exercise the right of preference even if the concessioner chooses not to submit a responsive proposal in response to a prospectus. The organization makes this argument despite the fact that Sections 403(8)(B)(iii) and 403(8)(C)(ii) of the 1998 Act expressly state that in order for an incumbent concessioner to exercise a right of preference it must have "submitted a responsive proposal for a proposed new concession contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4)." The commenter does not explain the basis of its position, other than to say that the requirement for submission of a responsive proposal was not included in the 1965 Act.

NPS considers this position baseless for several reasons in addition to the fact that it is in direct contradiction of the express terms of the 1998 Act.

The first reason is that the responsive proposal requirement of the 1998 Act reflects the terms of 36 CFR part 51 in effect prior to the passage of the 1998 Act. 36 CFR part 51 required, prior to

this amendment, the submission of a responsive proposal by an existing satisfactory concessioner in order to be given a preference in renewal by NPS under the 1965 Act. In fact, the 1998 Act codifies the prior 36 CFR Part 51 in this respect.

In 1995, an incumbent concessioner challenged the validity of the responsive proposal requirement of 36 CFR part 51 after refusing to meet the minimum investment requirements of a prospectus for a new concession contract. *Hotcaveg v. Kennedy*, 883 F. Supp. 428, (E.D. Mo. 1995), *aff'd*, 72 F. 3rd 133 (8th Cir. 1995). The district court in *Hotcaveg* held that the responsive proposal requirement was not a violation of the 1965 Act, stating that:

Requiring concessioners to meet minimum standards to improve the quality of facilities in national parks is a reasonable interpretation of the role of the National Park Service. The Secretary is carrying out his duty mandated by statute. *Id.* at 429.

Congress must be presumed to have been aware of the NPS regulatory requirement regarding submission of responsive proposals when it was considering the 1998 Act and also aware of the fact that the 8th Circuit had upheld this requirement in 1995 as an appropriate implementation of the 1965 Act. NPS points out that the general concessioner organization filed an *amicus* brief in *Hotcaveg* on behalf of the plaintiff and also objected to, as unlawful, the responsive proposal requirement of 36 CFR part 51 at the time it was proposed by NPS.

Secondly, 1965 Act concession contracts, of course, make no reference to a contractual right to not be obliged to submit a responsive proposal as a condition to being given a preference in renewal. Accordingly, NPS has rejected the commenter's position that the responsive proposal requirements of the 1998 Act do not apply to 1965 Act contracts because of Section 415 of the 1998 Act.

Further, such an interpretation would clearly frustrate the 1998 Act's goal of enhancing competition in concession contracting. If existing concessioners with a preference in renewal are not required to submit responsive proposals, prospective competitors will rightly conclude that submission of a competing proposal is a waste of time as the incumbent concessioner has a "lock" on the award of the new contract, evidenced by the fact that the incumbent, unlike the competitor, is not even required to submit a responsive proposal in order to compete for the contract.

*Section 51.50 (Section 51.31 in the final rule) What Happens If a Preferred Offeror Does Not Submit a Responsive Proposal?*

A comment repeated the argument regarding submission of a responsive proposal. This issue is responded to under Section 51.49.

*Section 51.51 (Section 51.32 in the final rule) What Is the Process If the Director Determines That the Best Responsive Proposal Was Not Submitted by a Preferred Offeror?*

One comment suggested that this section should make clear that NPS must advise the preferred offeror as to the specific areas in which it must amend its proposal to meet the better terms and conditions of the best proposal. NPS considers that this requirement is implicit in this section. However, NPS has made the requested change.

*Section 51.52 (Section 51.33 in the final rule) What If the Preferred Offeror Does Not Timely Amend Its Proposal To Meet the Terms and Conditions of the Best Proposal or Is Not a Qualified Person To Carry Out the Terms of the Amended Proposal?*

A comment was directed to Section 51.51 but NPS considers based on its content that it was intended to be directed to Section 51.52. The comment suggests that it is unlawful for the NPS to require "requalification" of a preferred offeror if it exercises a right of preference by matching the terms and conditions of a better proposal. NPS disagrees with this as Section 403(4)(B) of the 1998 Act states:

(B) The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that the person, corporation or entity is not qualified, is not likely to provide satisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.

NPS considers that this section of law requires that an award of a concession contract, whether or not through the exercise of a preference in renewal, must be to a qualified person within the meaning of the statute. Congress could not possibly have intended the right of preference to require award of a concession contract to an unqualified entity.

However, NPS has modified this section in the final rule to delete express reference to the qualified offeror requirement of the 1998 Act as it would at best rarely occur that an amended

proposal from a preferred offeror would need to be rejected by NPS on the basis of the qualified offeror requirement of the 1998 Act.

*Section 51.53 (Section 51.34 in the final rule) What Will the Director Do If a Selected Preferred Offeror Does Not Timely Execute the New Concession Contract?*

A comment appears to have been made in reference to this section. It suggests that it is not proper to require a preferred offeror to execute a concession contract within the period specified by the Director. The comment suggests that the language of the contract may differ from the prospectus or the proposal (an event not permissible under the statute and the regulations). NPS disagrees and notes that the requirement is equally applicable to all selected offerors, whether or not a preferred offeror.

*Section 51.54 (Section 51.35 in the final rule.) What Happens to a Possible Right of Preference If the Director Receives No Responsive Proposals?*

The general concessioner organization agreed with the intentions of this section but suggested that the word "different" be substituted for "more favorable" as it may be difficult to establish whether it is more or less favorable than the prior prospectus. NPS has not made the requested change to this section. This is because the new prospectus would necessarily be different from the old prospectus, e.g., at the least, the commencement date of the new contract would very likely change in a new prospectus because of the passage of time.

*Section 51.55 (Section 51.47 in the final rule and retitled.) How Do I Appeal a Decision That a Prior Concessioner Is Not a Preferred Offeror?*

Several comments stated that thirty days is not sufficient time to prepare an appeal. (One comment suggested a sixty-day period.) In response to these comments, NPS has provided in the final rule that NPS may extend this period upon request by the concessioner if NPS determines that the concessioner demonstrates good cause for an extension. NPS has also included a requirement in the final rule that an appeal must specify the grounds for the appeal. In addition, in response to comments encouraging competition in concession contracting, NPS has expanded the administrative appeal right contained in the proposed regulations to permit a person an administrative appeal with respect to a determination by the Director that a

concessioner is a preferred offeror. NPS considers, in light of the anti-competitive consequences of preferred offeror status, that potential competitors should have a right of administrative appeal with respect to such determinations.

A comment suggested that the appeal should not be considered by the Director personally (or a Deputy or Associate Director) as called for by this section. The concern is that these individuals may be too busy to timely consider an appeal. However, NPS considers that these officials will be able to make timely appeal decisions. Moreover, the fact that an appeal must be considered by the highest levels of NPS is for the benefit of concessioners as it ensures national consistency on the important issue of right of preference.

Another comment suggested, without amplification, that the appeal process contained in this section is "illusory." NPS disagrees. The Director (or a Deputy or Associate Director) will be fully accountable for their appeal decisions.

The general concessioner organization submitted extensive comments on this section. NPS responds below. However, NPS first notes that the underlying premise of the comments is that it is illegal for NPS to require concessioners that, allegedly, have a contractual right of preference under 1965 Act concession contracts, to submit a responsive proposal in order to exercise this right. As a consequence of this argument, the commenter describes a number of hypothetical consequential inequities resulting from this section. The issue of whether a concessioner with a "contractual right of preference" has to submit a responsive proposal as required by the statute is addressed under Section 51.49. NPS responds here only to other aspects of the comment's criticisms of this section.

The general concessioner organization's first specific point is that NPS must make the internal decision as to whether the existing concessioner is a "preferred offeror" before issuing a prospectus. This is not the case. NPS notes that in most cases an existing concessioner will know that it is a satisfactory concessioner for purposes of a preference in renewal in advance of the issuance of a prospectus. However, NPS will not necessarily make final decisions affecting the existence of a preferred offeror regarding the terms of the new concession contract (i.e., will it have gross receipts of less than \$500,000, will it be an outfitter and guide contract, will it continue the previous visitor services), prior to the issuance of the prospectus.

The comment goes on to argue that submitting a responsive proposal is a heavy burden that a concessioner should not have to bear prior to a decision as to whether it is a preferred offeror. This argument is posited on the notion that a concessioner with an asserted "contractual right of preference" is not legally required to submit a responsive proposal in response to a prospectus in order to exercise a right of preference. As discussed under Section 51.49, this is not the law. The statutory requirement to submit a responsive proposal is not a burden imposed by this section. It is imposed by the 1998 Act.

Several commenters suggested in effect that the regulations should make clear that a right of appeal is to be provided not only with respect to a concessioner's status as a preferred offeror but also with respect to whether a new concession contract is a qualified concession contract for purposes of a right of preference. NPS agrees with this suggestion and has clarified this section and other sections in the final rule to make clear that an appeal regarding whether a concessioner is a preferred offeror includes appeal as to whether a new concession contract is a qualified concession contract. NPS has made several other conforming amendments to sections of the final rule to reflect an appeal right for a determination that a new concession contract is not a qualified concession contract.

NPS notes, however, that although the final rule expressly provides an appeal from a determination that a new concession contract is not a qualified concession contract, this does not establish an appeal with respect to the content of prospectuses or the terms and conditions of new concession contracts. The content of prospectuses and the terms and conditions of new concession contracts, except to the extent mandated by this part or the 1998 Act, are determined in the discretion of NPS. (See Section 403(10) of the 1998 Act: "Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.")

In addition to these general comments, the general concessioner organization made a number of more specific arguments concerning this section, asserting for a variety of reasons that it is illegal. NPS responds to them as appropriate as follows.

In its first specific comment, the general concessioner organization misreads Section 51.32 of the proposed regulations to interpret it to mean that

NPS may unilaterally modify the terms and conditions of existing concession contracts. Section 51.32, of course, does not give NPS the authority to do this. NPS has amended Section 51.32 in the final regulations to eliminate any ambiguity it may have contained in this regard.

The commenter states that although the NPS now attempts to justify these additional procedural burdens in order to ensure that a right of preference cannot "block policy," the commenter is "not aware of any significant bidding scenario in the history of the NPS concession program in which a right of preference was successfully used to promote such interference."

NPS notes that the quoted words do not appear in the proposed regulations or in their preamble.

The comments suggest that it is the intention of the proposed regulations that an appeal under this section is to be made to the initial decision-maker. This, of course, is not the case. The apparent confusion of the commenter is based on the fact that the regulations as a matter of form always refer to the "Director" as the responsible official. This is customary practice in NPS regulations and in many regulations of other federal agencies. In fact, it tracks the 1998 Act that always refers to the Secretary of the Interior as the responsible official even though, of course, the Secretary's responsibilities under the Act are delegated to subordinate officials. The proposed regulations were not intended to suggest that appeals from a deciding official would be directed to the deciding official. The proposed regulations state that the term "Director" means the Director of the National Park Service or an authorized representative of the Director, except where a particular official is specifically identified in this part.

The comments suggest that this section is illegal in violation of the Administrative Procedures Act on the premise that adjudicatory proceedings must be utilized in such an appeal. However, the Administrative Procedures Act does not require adjudicative procedures in the type of determination at issue in this section. The procedures provided meet all legal requirements.

The comments repeat the concern about an appeal to the deciding official and suggests that the appeal provided by this section fails to provide meaningful, timely relief. The basic argument is that it is improper for a solicitation to proceed while an appeal is ongoing. This argument, in turn, is premised on the notion that an

incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal (contrary to the express terms of the 1998 Act). The argument is that the existing concessioner in these circumstances, if the appeal is not determined prior to the release of a prospectus, will be required to take an action (submission of a responsive proposal), that it is not otherwise legally required to do. NPS has not made this change as the 1998 Act requires submission of a responsive proposal.

The comments assert that the fact that in this section the appellant only receives a "possible" right of preference if it wins an appeal does not "guarantee" that the concessioner will have a right of preference. But the term "possible" with respect to a right of preference only refers to the fact that a concessioner with a "possible" right of preference must submit a responsive proposal, as expressly required by the 1998 Act, in order to have an unconditional right of preference. However, to avoid confusion, NPS has deleted reference to a "possible" right of preference in the final rule except in circumstances where clarity requires use of the word.

The comments summarily allege that the appeal procedure contained in this section is illegal. NPS disagrees with this position. For the reasons discussed above, the administrative appeal provided by this section conforms with standard administrative practice, deprives no one of any constitutional rights, and is consistent with the purposes of the 1998 Act.

The last specific comment of the general concessioner organization under this section is a restatement of its prior arguments, particularly the argument that an incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal to a concession contract prospectus in order to exercise the right of preference. The general concessioner organization's argument is baseless as discussed under Section 51.49.

Subpart F—Leasehold Surrender Interest (Subpart G in the final rule.)

*Section 51.56 (Section 51.51 in the final rule.) What Special Terms Must I know To Understand This Part?*

"Arbitration"

For the purposes of clarity, NPS has added a definition of "arbitration" and a description of arbitration procedures to this section in the final rule. This replaces the description of arbitration proceedings contained in Section 51.78 in the proposed regulations. See the

discussion under Section 51.78 as to how the final rule is changed with respect to arbitration procedures. Other references to arbitration in the final rule also refer to Section 51.51 of the final rule.

#### “Capital Improvement”

The general concessioner organization objected to this definition because it differed from the definition of “capital improvement” contained in the 1998 Act. The comment states that “NPS has no authority to use a different definition.” This statement is incorrect. NPS, in drafting regulations to implement the 1998 Act, has clear authority to interpret the 1998 Act through appropriate definitions to set forth understandable and workable regulations consistent with the terms of the statute.

NPS, however, in order to accommodate the concerns of the organization in this connection, has amended this definition in the final regulations to track the 1998 Act’s definition. This amendment does not result in a substantive change to the meaning of “capital improvement.”

Several commenters suggested that this definition be clarified to make clear that it encompasses floating docks. NPS, because of the special circumstances of floating docks, has amended the definition of “fixtures” in this connection and has also added the term “barges” to the capital improvement definition to make clear that barges are not floating docks. Floating docks are considered to be non-removable equipment under this part for leasehold surrender interest purposes only. This change should not be construed as indicating that NPS necessarily considers that possessory interest may be obtained in floating docks.

#### “Construction Cost”

The general concessioner organization objected to the definition of “construction cost,” stating that it does not cover all elements of construction cost. This comment is discussed below under “Eligible Direct and Indirect Costs.”

The commenter also requested deletion of the reference to a concessioner’s income tax returns with respect to construction cost. NPS has done this in the final rule. In addition, as suggested by the general concessioner organization, the final rule states that construction costs must be capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP).

NPS did not remove the reference in this definition to “approval by the

Director” as requested by a commenter. However, the approval process in the text of the final rule has been amended to reflect the commenter’s concerns in this respect.

#### “Depreciation”

The general concessioner organization objected to the inclusion of certain terms in the definition of “depreciation” as contained in the proposed regulations, arguing that obsolescence should not be an element of depreciation with respect to leasehold surrender interest capital improvements. However, the common definition of depreciation as used in the appraisal industry states that it is the loss of value in property from “any cause” and further states, in regard to improvements, that depreciation encompasses both “deterioration and obsolescence.” See the definition of “depreciation” in *The Dictionary of Real Estate Appraisal*, 3rd Edition (1993), published by the Appraisal Institute (hereinafter referred to as the “3rd Edition”). NPS does not consider that there are significant differences, if any, between the depreciation terms of the 1998 Act and the definition of depreciation contained in the 3rd Edition. In this connection, the commenter elsewhere refers to the Appraisal Institute as an appropriate source of definitions regarding leasehold surrender interest terms. In any event, NPS, in the final rule, has deleted the terms to which the commenter objected as unnecessary.

NPS notes that the House and Senate Committee Reports that accompanied S. 1693, in their general description of the bill, mention “wear and tear” depreciation but in their section-by-section analyses discuss depreciation in terms of deterioration and prospective serviceability. NPS considers that the reference to “wear and tear” depreciation was off-hand and not meant to modify the statutory description of depreciation.

Another commenter asked whether “depreciation” refers to depreciation for federal income tax purposes. It does not. It refers to the type of depreciation discussed above.

#### “Eligible Direct and Indirect Costs”

NPS was surprised that several comments objected to the scope of construction costs (direct and indirect) contained in the proposed regulations. This is because the proposed regulations, to the benefit of concessioners, utilized a significantly more expansive definition of “construction cost” than its usual meaning. Particularly, NPS included in

the definition a number of indirect costs of a concessioner related to construction, e.g., architect’s fees, environmental study costs, and on-site inspection expenses, even though the developer’s costs related to construction are not generally considered to be “construction costs.”

For example, *The Dictionary of Architecture & Construction*, Second Edition (1993), defines “construction cost” as:

The cost of all the construction portions of a project, generally based upon the sum of the construction contract(s) and other direct construction costs; does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.

For another example, the 3rd Edition defines “construction cost” as:

The cost to build, particularly an improvement; includes the direct costs of labor and materials plus the contractor’s indirect costs. (Emphasis added.)

The comment from the general concessioner organization took the position that the definition of “construction cost” should be that which is utilized in Chapter 16 (page 346) of the Eleventh Edition of *The Appraisal of Real Estate* published by the Appraisal Institute (hereinafter referred to as the “11th Edition”).

NPS has reviewed the elements of construction cost that are contained in the 11th Edition. However, NPS notes that the context of the term “construction cost” as used in Chapter 16 of the 11th Edition is for purposes of appraising the fair market value of real estate by the reproduction or replacement cost method. For this reason, several costs of the owner (such as marketing expenses and post-construction carrying costs) may be included as indirect costs for the purposes of a fair market value appraisal. The fact that “construction cost” has this broader meaning in Chapter 16 is apparent from the fact that the 3rd Edition, referenced above, the American Appraisal Institute’s dictionary of appraisal terms, defines “construction cost” as the cost to build, including indirect costs of the contractor. No reference to the costs of the owner is made. The 3rd Edition is cited as a reference in the 11th Edition.

Accordingly, NPS does not consider that the 11th Edition’s description of “construction cost” for fair market value purposes is reflective of the meaning of the term as used in the 1998 Act. The following provision of the legislative history of the 1998 Act makes clear that

a "fair market value" definition of construction cost was not intended by the Congress:

The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investments in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in any undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary can accurately calculate the amount for purposes of competitive solicitation of concession contracts. S. Rep. No. 105-202, at p. 35 (1998).

NPS also notes that "fair market value" was an express element of the value of possessory interest under the 1965 Act. If Congress had intended the term construction cost to be construed in a fair market value context, it would have so stated consistent with the terms of the 1965 Act. NPS considers that the definition of construction cost and of the terms "eligible direct and indirect construction costs" as set forth in the proposed regulations are appropriate interpretations of the term "construction cost" as used in the 1998 Act.

However, in an effort to accommodate the reasonable concerns of the general concessioner organization, NPS in the final rule has included all the direct construction costs set forth in the 11th Edition. In addition, NPS has included in the final rule as many of the specific indirect costs mentioned in the 11th Edition as it considers reasonable in light of its understanding of the term "construction cost" as used in the 1998 Act.

NPS has not included in the final rule the following indirect costs mentioned in the 11th Edition: marketing expenses; sales commissions; leasing commissions; legal fees; title transfers; the cost of carrying the investment after completion of construction; and tenant improvements (tenant improvements may be eligible direct costs).

NPS also has not included as an indirect cost the cost of carrying the investment in land as mentioned in the 11th Edition, as a concessioner makes no investment in land.

NPS particularly would like to comment on a concessioner's

administrative expenses related to construction. The 11th Edition mentions the "administrative expenses of the developer" as possible indirect costs for fair market value appraisal purposes. NPS has not included this very broad item of indirect costs in the final rule, but, consistent with the proposed rule, has included administrative expenses of the concessioner related to direct, on-site construction inspection. NPS notes that, unlike the administrative expenses of a "developer" as contemplated by the 11th Edition, a concessioner's administrative expenses flow from all of its business activities. In any event, NPS does not consider that additional administrative expenses of a concessioner are appropriate to include as eligible indirect construction costs for the reasons discussed in the preceding paragraphs.

The general concessioner organization also requested that "entrepreneurial profit" be treated as a construction cost. However, the 11th Edition describes "entrepreneurial profit" as the difference between the "cost of development" and the "value of the property" after completion." 11th Edition, p. 346. Accordingly, entrepreneurial profit is not a direct or indirect construction cost even as described by the 11th Edition for fair market value appraisal purposes.

NPS also has not accepted the commenter's suggestion that construction costs include "extra costs" associated with dealing with the NPS. The costs of the construction are what they are. Any "extra" construction costs that may exist (NPS does not agree that there are such "extra" costs) with respect to the fact that a concessioner's construction activities are subject to oversight by NPS are necessarily included within the actual construction cost.

The general concessioner organization questioned the portion of this definition that limits construction costs to "amounts no higher than those prevailing in the locality of the project." NPS considers this limitation necessary and has retained it in the final rule. This limitation is important in circumstances where construction work is performed directly by the concessioner, i.e., force account work, or performed by an affiliate of a concessioner. In this connection, a comment suggested that construction costs should include the costs of the concessioner when the concessioner acts as a contractor, e.g., constructs or installs a capital improvement with its own labor force. The definition of construction costs in the final rule makes this clear. NPS notes, however, that only actual

expenses of the concessioner capitalized in accordance with Generally Accepted Accounting Principles are construction costs for leasehold surrender interest purposes.

Another commenter, in addition to making generally the same suggestions as discussed above, requested that the cost definitions be amended to make clear that a current concessioner is not required to pay for environmental studies that are to be used by NPS to develop a prospectus. NPS has not made any changes in this connection as it considers that the regulations cannot be read to require a concessioner to pay for environmental studies in these circumstances.

This commenter also suggested that costs of concessioner initiated studies that facilitate the work and enhance the environment should be eligible costs. NPS considers that the cost definitions in the final regulations achieve this objective to the extent consistent with the term "construction cost" as used in the 1998 Act.

"Fixtures and Non-Removable Equipment"

The general concessioner organization objected to the second sentence of this definition as being too restrictive as to the meaning of these terms. It also suggested an alternative test. NPS has adopted as appropriate the alternative test in the final regulations and has deleted the examples to avoid possible confusion. To avoid unnecessary discussion, NPS deleted the examples of fixtures and non-removable equipment as several commenters objected to one or more of them as being incorrect. Their deletion, however, should not be considered as indicating that NPS necessarily considers any of the examples to be incorrect.

"Ineligible Costs"

NPS has deleted this definition in the final rule as unnecessary. The deletion obviates concerns expressed about this definition.

"Leasehold Surrender Interest"

One commenter asked whether "related capital improvements" as used in this definition may refer to improvements a concessioner makes that are not related to its operations. The definition contained in the proposed regulations relates only to capital improvements built on park lands under the terms and conditions of a concession contract. If a concessioner makes capital improvements to park lands under some other form of authorization, no leasehold surrender interest would be obtained.

A comment (that attached a letter from a bank) suggested that banks will not lend money on the basis of a leasehold surrender interest under the limitations of the 1998 Act. NPS disagrees. The leasehold surrender interest concept will permit concessioners to obtain loans using leasehold surrender interest as collateral. NPS notes that the objections of the bank to leasehold surrender interest apply equally to possessory interest under the 1965 Act. Many lending institutions made loans to concessioners secured by possessory interest.

“Leasehold surrender interest value”

NPS has added to the definition of leasehold surrender interest value in the final rule reference to Section 405(a)(4) of the 1998 Act that permits a different valuation of leasehold surrender interest in certain circumstances effective nine years after the effective date of the 1998 Act. It has also clarified the proposed rule in the final rule to indicate that, in the event a concessioner ceases to utilize a related capital improvement under the terms of a concession contract prior to the termination or expiration of a contract (*e.g.*, where the Director takes a capital improvement out of service for resource protection purposes), the applicable depreciation and entitlement to payment of leasehold surrender interest value is established as of the date the concessioner ceases to utilize the related capital improvement.

“Major rehabilitation”

NPS has modified the definition of “major rehabilitation” in the final rule to adopt a 50% test rather than a 100% test as discussed under Section 51.75.

“Related Capital Improvement or Fixture”

\* \* \* \* \*

“Structure”

A comment suggested that the term “structure” be amended to include landscaping and plantings that are installed as integral to the construction of a capital improvement. NPS has adopted this suggestion in the final rule to the extent that landscaping is an integral component of the construction of a structure. Landscaping includes necessary initial plantings but does not include “re-landscaping” (except as part of a major rehabilitation), landscape maintenance or subsequent plantings.

“Substantial Completion”

For the purpose of clarity, NPS has added a definition of “substantial completion” in the final rule. The

definition tracks the definition of the term in the 3rd Edition. A commenter questioned the use of the term in the proposed regulations. The term is needed in order to establish the completion date of a capital improvement.

*Section 51.57 (Renumbered as Section 51.52 in the final rule.) How Do I Obtain a Leasehold Surrender Interest?*

The general concessioner organization objected to the second sentence of this section, stating that “NPS cannot qualify the right to leasehold surrender interest by contract, and to do so is inconsistent with the 1998 Act.”

This position cannot be reconciled with the express language of Section 405 of the 1998 Act:

(a) Leasehold Surrender Interests Under New Concession Contracts.—On or after the date of enactment of this title, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract shall have a leasehold surrender interest in such capital improvement subject to the following conditions. \* \* \* (Emphasis added).

Under this authority, the terms and conditions of a concession contract may detail leasehold surrender interest requirements so long as the provisions are consistent with the 1998 Act. In this connection, Section 403(10) of the 1998 Act states that “Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this Title.” (Emphasis added.) Further, Section 417 of the 1998 Act requires the Secretary to promulgate regulations appropriate for implementation of the 1998 Act. There is nothing in the 1998 Act that suggests that such regulations may not place appropriate conditions on leasehold surrender interest.

*Section 51.58 (Deleted in the final rule) If a Concessioner Does Not Comply with the Requirements of This Part or the Terms and Conditions of a Concession Contract, What Happens?*

The general concessioner organization objected to this section because “a concessioner is entitled to a leasehold surrender interest in all capital improvements it constructs on park lands.” This statement, however, leaves out the phrase of the 1998 Act discussed under the previous section that grants a leasehold surrender interest for capital improvements that are constructed “pursuant to a concession contract.” The commenter also argues that this

section is vague in referring to the requirements of this part and the terms and conditions of the concession contract without further guidance. NPS does not consider that these regulations or its concession contracts are vague as to leasehold surrender interest requirements or otherwise. However, in consideration of comments in this connection, NPS has deleted this section in the final rule as unnecessary in light of the leasehold surrender interest terms of the 1998 Act, this part, and concession contract terms and conditions.

Another commenter suggested that this section improperly gives NPS the ability to deprive a concessioner of leasehold surrender interest by determining that the concessioner had failed to meet the requirements of its concession contract. NPS considers that the commenter misconstrued the meaning of this section. In any event, the section has been deleted in the final rule.

*Section 51.59 (Section 51.53 in the final rule and retitled) Why May the Director Authorize the Construction or Installation of a Capital Improvement?*

The general concessioner organization suggested in a comment on this section that the phrase “under the terms of a concession contract” be added after the first use of the word “concessioner” in this section. NPS has been made this change.

*Section 51.60 (Section 51.54 in the final rule) What Must a Concessioner Do Before Beginning To Construct or Install Capital Improvements in Which The Concessioner Seeks a Leasehold Surrender Interest?*

Several comments were received objecting to the ability of NPS to determine that construction costs are “unreasonable.” In response to these comments, NPS has amended this section in the final rule to delete reference to disapproval of the construction of a capital improvement if NPS considers the costs unreasonable.

Another commenter suggested that approvals under this section should be delegable to the park area superintendent. See the changes to the definition of Director in Section 51.3.

*Section 51.61 (Section 51.55 in the final rule) What Must a Concessioner Do After Substantial Completion of The Capital Improvement?*

The general concessioner organization made several comments on this section.

The first sentence of its comment on this section appears to be incomplete. NPS thinks the comment meant to say

that, although construction invoices should be available and a certification by certified public accountant is appropriate, the invoices should not be submitted to NPS but only be made available to NPS for inspection for a period of three years after project completion. This suggestion, if NPS has accurately interpreted it, is not acceptable to NPS. Other commenters made similar suggestions. The existence of a leasehold surrender interest in effect places on the government a burden to pay a concessioner, or require a third party to pay a concessioner, the construction cost of a building perhaps twenty or more years after the building is completed. This obligation, in the view of NPS, requires submission to NPS of the information required by this section in order to properly fulfill NPS's administrative responsibilities for this financial obligation.

The comment also requested that the costs of obtaining the certified public accountant certification be a construction cost element for leasehold surrender interest purposes. NPS has not accepted this suggestion in light of the definition of "construction cost" set forth in Section 51.56.

NPS has modified this section in the final rule to clarify that the construction cost of a project incurred after substantial completion of a project are included as construction cost for leasehold surrender interest purposes.

*Section 51.62 (Section 51.56 in the final rule) How Will the Director Determine the Construction Cost for Purposes of Leasehold Surrender Interest Value?*

Several comments suggested in effect that this section provides NPS with undue latitude to define eligible construction costs for which a leasehold surrender interest will be obtained after construction is complete, thereby placing an undue risk on the concessioner. NPS has amended this section in the final rule to make clear that the review of construction costs by NPS after project completion is limited to a determination that the construction costs claimed are eligible costs within the meaning of these regulations. NPS considers that this change will satisfy the concerns of the commenters in this connection. NPS feels strongly, however, that NPS review of submitted construction costs is an absolute requirement in light of the financial obligation leasehold surrender interest creates for the government or a successor concessioner.

A comment objected to the fact that this section imposes no time constraints on the Director with respect to approval of leasehold surrender interest

construction costs. NPS has not changed this section in response to this comment as it is impossible to state a standard time period for the review of construction costs in light of the fact that some projects may be for as little as \$10,000 and others in excess of \$10 million. This is likewise true with respect to a time limit for appeals under Section 51.63.

*Section 51.63 (Section 51.57 in the final rule and retitled) May the Concessioner Appeal the Director's Determination of Construction Cost?*

Several comments objected to the appeal process provided by this section on the general grounds that it does not provide sufficient rights to the concessioner. NPS has changed this section in the final rule to make a dispute over construction cost subject to binding arbitration at the request of a concessioner.

*Section 51.64 (Section 51.58 in the final rule) What Actions May or Must the Concessioner Take With Respect to a Leasehold Surrender Interest?*

The general concessioner organization objected to subsection (c) of this section with respect to its statement that a concessioner may agree to an alternative value for leasehold surrender interest. While not necessarily agreeing with this comment, NPS has deleted the phrase regarding alternative values in the final rule. Other comments suggested that this section should state that NPS cannot require waiver of a leasehold surrender interest. NPS has not changed this section in this respect as it merely repeats an express term of the 1998 Act.

*Section 51.65 (Section 51.59 in the final rule) Will Leasehold Surrender Interest Be Extinguished by Expiration or Termination of a Concession Contract or May It Be Taken for Public Use?*

The general concessioner organization made a comment on this section that "only payment pursuant to the 1998 Act constitutes just compensation for any purpose." NPS considers that the payment terms of the final rule are consistent with the 1998 Act regarding leasehold surrender interest. The commenter also made an argument under this section as to when payment for leasehold surrender interest must be made. This argument is addressed under Section 51.67.

*Section 51.66 (Section 51.60 in the final rule) How Will a New Concession Contract Awarded to a Prior Concessioner Treat a Leasehold Surrender Interest Obtained Under a Prior Concession Contract?*

The general concessioner organization objected to this section on the same grounds as it objected to Section 51.65. NPS has modified this section (and Section 51.65) in the final regulations to delete as unnecessary the phrase "the new concession contract" and to replace it with "this part."

*Section 51.67 (Section 51.61 in the final rule) How Is a Prior Concessioner That Is Not Awarded a New Concession Contract To Be Paid for a Leasehold Surrender Interest?*

Several comments objected to this section with respect to the timing of payment for leasehold surrender interest, particularly to the fact that the section does not necessarily require payment for a concessioner's leasehold surrender interest immediately upon expiration or termination of the concession contract. Rather, the proposed section permits payment within one year of contract expiration or termination if a successor concessioner is to acquire the leasehold surrender interest and two years if the payment is to be made by NPS.

The comments of the general concessioner organization take the position that a concessioner has a right under the 1998 Act "to continue to operate the facilities under the terms of the concession contract until it is paid for its leasehold surrender interest, as required by the 1998 Act." This position suggests that a concessioner that is providing unsatisfactory service to the public, is not maintaining its buildings, or, that is engaged in environmentally damaging activity, among other possibilities, has a right, paramount to the preservation and protection of the park area and its visitors, to continue to operate until leasehold surrender interest payment is received.

This position is manifestly contrary to the purposes of the 1998 Act.

The position is also without legal merit. NPS points out that Section 405(a)(1) of the 1998 Act states that a concessioner has a leasehold surrender interest in capital improvements under a concession contract, "consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner's leasehold surrender interest in the capital improvement." (Emphasis added.) This provision makes no mention of a right to continue operations until the date of

payment as asserted by the general concessioner organization. NPS considers that such a right, that would be in stark conflict with the purposes of the 1998 Act as discussed further, cannot be read by implication into the 1998 Act as argued by the general concessioner organization.

In addition, Section 405(a)(2)(C) of the 1998 Act states that a leasehold surrender interest "shall not be extinguished by the expiration or other termination of a concession contract," a provision that is in direct conflict with the view that leasehold surrender interest value must be paid on the date of contract expiration or termination. (Emphasis added.) Finally, Section 405(c) of the 1998 Act states that, upon expiration or termination of a 1998 Act concession contract, a concessioner shall be "entitled" under the terms of a concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest. This value is to be calculated as of the date of expiration or termination. However, the statute does not state that the value must be paid on the date of termination or expiration of the contract. The statute also states that the entitlement is "under the terms of the concession contract."

The regulations expressly establish in the concessioner, as of the date of contract expiration or termination, an unconditional entitlement under the terms of the concession contract to be paid its leasehold surrender interest value. The regulations also call for the leasehold surrender interest depreciation deduction to be calculated as of the date of contract expiration or termination (or, if applicable, as of a prior relinquishment date). These provisions appropriately implement the requirements of the 1998 Act.

The general concessioner organization apparently reads the 1998 Act to mean that there is an absolute entitlement to payment of the leasehold surrender interest value on the date of expiration or termination, and, if payment is not received on that date, an entitlement to continue operations until payment is received. NPS disagrees with this interpretation on the basis of the text of the statute as discussed above. Further, such an interpretation of the 1998 Act flies in the face of the overwhelming thrust of the 1998 Act that preservation of park area resources and protection of park area visitors is the paramount mandate with respect to visitor services in areas of the national park system.

It is the primary responsibility of NPS to preserve and protect areas of the national park system and their visitors under both the NPS Organic Act (16

USC 1 *et seq.*) and the 1998 Act. The 1998 Act and the Organic Act state that the "preservation and conservation of park resources and values require that such public accommodations facilities and services as have to be provided within [park areas] should be provided only under carefully controlled safeguards against unregulated and indiscriminate use." (Emphasis added.) Section 402(b)(2) of the 1998 Act also states that:

(b) Policy.—It is the policy of the Congress that that the development of public accommodations, facilities and services in units of the National Park System shall be limited to those accommodations, facilities, and services that are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.

It is indisputable that there may be circumstances in which NPS must immediately terminate the operations of a concessioner in order to fulfill its statutory responsibilities to park areas and visitors. For example, an area of a park may be found to be endangered species habitat, requiring immediate cessation of human activity, or, the threat of natural disaster such as a threatened volcanic eruption may require that a concession operation be immediately terminated in the interest of public safety. In addition, there may be circumstances where NPS is forced to immediately close a concession operation because of environmental damage such as sewage leakage into a threatened cave system. Finally, there may be circumstances where the performance of a concessioner in breach of contract is so bad (e.g., life/health/safety violations) that the concession operations and the concession contract must be immediately terminated in the interest of public health or safety.

The amount of money due the existing concessioner under a concession contract for a leasehold surrender interest could exceed available funds appropriated to NPS in any given fiscal year. It would not always be possible for NPS to obtain a new concessioner or make immediately available appropriated funds in these circumstances in order to pay leasehold surrender interest as a pre-condition to termination of the concession contract. NPS must have the ability to terminate concession contracts in order to carry out its statutory responsibilities to park areas and visitors.

NPS, however, is aware of the business needs of concessioners to obtain timely payment for leasehold

surrender interests. This is why NPS, through the proposed regulations, placed limitations on the time for payment, one year with respect to payment by a new concessioner (it takes approximately a year to prepare for, solicit and award a new concession contract) and two years for payment by the government (the two year period reflecting the federal budget cycle).

Several other comments submitted by concessioners expressed concern about the timing of payment under this section but also made a practical suggestion. These comments suggested that the section be amended to provide interest during any period in which payment was delayed after the expiration or termination of a concession contract. NPS considers these suggestions as appropriate and has included an interest provision in this section in the final rule. NPS considers that the payment of interest (in addition to the CPI adjustment that continues until the date of payment) is fair and will be more than sufficient to encourage lenders to make loans against leasehold surrender interest, a concern raised by other comments in this connection. NPS notes that one commenter suggested that the timing of payments for leasehold surrender interest could result in a \$100 million effect on the economy. NPS believes this assertion to be unfounded, but, in any event, considers that the changes in the final rule eliminate any concerns in this respect.

In addition, in order to further accommodate the concerns of commenters, NPS has modified this section in the final rule to state that the date of payment for a leasehold surrender interest, except in extraordinary circumstances beyond the control of NPS, is to be the date of expiration or termination of the concession contract. In addition, NPS has modified the final rule to require payment within one year of the expiration or termination of a concession contract.

*Section 51.68 (Section 51.63 in the final rule) When a New Concessioner Pays a Prior Concessioner for a Leasehold Surrender Interest, What Is the Leasehold Surrender Interest in the Related Capital Improvements for the Purposes of a New Concession Contract?*

A new sentence has been added to this section in the final rule to expressly require a new concessioner to pay the previous concessioner for any leasehold surrender interest value that is due.

*Section 51.69 (Renumbered as Section 51.62 in the final rule) What Is the Process To Determine the Leasehold Surrender Interest Value When a New Concessioner Is To Pay a Prior Concessioner for a Leasehold Surrender Interest?*

Several comments objected to elements of this section. The primary concern was that the arbitration to determine the leasehold surrender interest value when a new concessioner is to pay a prior concessioner for leasehold surrender interest was to be undertaken by the new concessioner and the prior concessioner. The commenters recommend that the arbitration be between the prior concessioner and NPS. NPS has concurred in this view. This section has been amended accordingly in the final regulations.

Another comment objected to the fact that the arbitration is limited to establishing the depreciation deduction for purposes of leasehold surrender interest value and does not permit arbitration of the prior determination of construction cost required by this part. NPS has limited the arbitration issues in this manner because the final rule calls for arbitration of the construction cost after construction is completed. However, NPS, in response to this comment, has changed this section to include the calculation of the CPI as an additional subject of arbitration in the event of disagreement by the concessioner and NPS. This issue, as well as depreciation, will be current as of the time of the arbitration proceedings.

Comments also stated that the arbitration should take place in advance of the expiration of the prior concession contract. NPS generally concurs in this suggestion but notes that it may not always be possible to conclude an arbitration prior to the expiration of a concession contract, and, of course, it is unlikely that an arbitration could be concluded prior to a termination of a concession contract for default (which could be immediate in certain circumstances). NPS has changed this section in the final regulations to provide for arbitration in advance of contract expiration or termination where possible.

Several comments objected to this section with respect to the type of arbitration procedures it calls for. This issue is addressed under Section 51.78.

*Section 51.70 (Section 51.64 in the final rule and retitled) May the Concessioner Gain Additional Leasehold Surrender Interest by Adding to a Structure in Which the Concessioner Has a Leasehold Surrender Interest?*

The general concessioner organization objected to this section by referencing related objections to other sections. Those objections are discussed under the relevant sections.

NPS has modified this section in the final rule to include "major rehabilitations" within its scope. This permits deletion of Section 51.72 of the proposed regulations in the final rule.

*Section 51.71 (Section 51.65 in the final rule) May the Concessioner Gain Additional Leasehold Surrender Interest by Replacing a Fixture in Which the Concessioner Has a Leasehold Surrender Interest?*

The general concessioner organization objected to this section and stated that it is not supported by law on the grounds that when an existing fixture is replaced by the concessioner there can be no reduction of leasehold surrender interest based on the removal of the existing fixture.

The flaw in this argument is apparent. Suppose a concessioner at the beginning of a concession contract with a twenty year term installs a furnace at a cost of \$1,000. In ten years, the concessioner replaces the furnace with a new furnace, costing \$1,200. At the expiration of the contract, the concessioner is entitled under this section and the 1998 Act to be paid for the value of its leasehold surrender interest. However, the replaced furnace is gone. The 1998 Act does not contemplate that a new concessioner will pay a prior concessioner for a fixture that no longer exists. Under Section 405(a)(3) of the 1998 Act, the leasehold surrender interest value in a capital improvement is the initial construction cost of the capital improvement, in this case the cost of purchasing and installing the furnace, plus a CPI adjustment up to the time of payment for the leasehold surrender interest, less depreciation of the capital improvement as evidenced by its condition and prospective serviceability in comparison with a new unit of like kind. Under any real property appraisal practice, the depreciation of a furnace that was replaced ten years ago is 100%. There is no value to be paid.

NPS has drafted this section carefully in order to fairly deal with the

complicated circumstances of fixtures and non-removable equipment under the leasehold surrender interest concept. Under this section in the proposed regulations, if a concessioner replaces a fixture with a new fixture of like kind, there is no adjustment to the leasehold surrender interest in the fixture. Under the proposed regulations, the new fixture replaces the old one and the concessioner's leasehold surrender interest continues unchanged. However, if the new fixture is a substantial upgrade from the replaced fixture, and if the construction cost of the new fixture exceeds the construction cost of the fixture to be replaced, the increase is added to the concessioner's leasehold surrender interest.

This has been changed in the final rule in order to accommodate to the extent reasonable the concerns of commenters. In the final rule, the entire construction cost of a new fixture is added to the leasehold surrender interest and the construction cost of the replaced fixture is subtracted.

*Section 51.72 (Deleted in the final rule) Will a Concessioner That Undertakes a Major Rehabilitation of an Existing Structure in Which the Concessioner Has a Leasehold Surrender Interest Increase Its Leasehold Surrender Interest?*

Several comments objected to this section on the general grounds that additional leasehold surrender interest should be obtained for any additional construction work undertaken by a concessioner. NPS disagrees. This issue is discussed under Section 51.75.

One comment requested additional guidance as to what constitutes a major rehabilitation. For example, the commenter asked, does adding an additional bathroom to a cabin constitute a major rehabilitation? A major rehabilitation is defined in Section 51.51 of the final rule. The construction of a second bathroom under this definition could be a major rehabilitation if its cost exceeds fifty percent of the pre-rehabilitation value of the cabin. NPS considers that the definition of "major rehabilitation" is clear. NPS, however, deleted as unnecessary in the final rule the second sentence in paragraph (2) of the definition of major rehabilitation.

This section has been deleted in the final rule as its content is included in Section 51.64 of the final rule.

*Section 51.73 (Section 51.66 in the final rule) In What Circumstances Will the Director Authorize a Concessioner To Obtain a Leasehold Surrender Interest in an Existing Capital Improvement in Which no Leasehold Surrender Interest Exists?*

Several comments objected to this section on the same general grounds, that all additional construction should obtain additional leasehold surrender interest. This issue is discussed under Section 51.75.

The general concessioner organization also objected to the last sentence of this section which stated that when an existing building in which a concessioner has no leasehold surrender interest undergoes a major rehabilitation, depreciation for the purposes of the leasehold surrender interest value will apply to the entire building. NPS has amended this sentence in response to the comment. It states in the final rule that depreciation will only apply to the elements of the major rehabilitation.

Finally, for the sake of clarity, this section has been rephrased and split into two subsections in the final rule without a change in its meaning except as noted in the prior paragraphs.

*Section 51.74 (Deleted in the final rule) Will a Concessioner Receive New or Additional Leasehold Surrender Interest as a Result of a Rehabilitation That Does Not Qualify as a Major Rehabilitation?*

Several comments objected to this section because "all capital improvements qualify for leasehold surrender interest." This issue is discussed under Section 51.75. Section 51.74 has been deleted in the final rule as redundant in light of Section 51.64 in the final rule.

*Section 51.75 (Section 51.67 in the final rule) Is a Concessioner Required To Repair and Maintain Capital Improvements, and, If So, Will the Concessioner Obtain Leasehold Surrender Interest as a Result?*

Several comments objected to this and other sections of the proposed regulations because, allegedly, "all capital improvements qualify for leasehold surrender interest." In this connection, the general concessioner organization equates the construction of capital improvements with "any repairs and maintenance" of a building that are "capitalized under GAAP."

In essence, the commenters seek leasehold surrender interest for the capitalized costs of repair and maintenance of an existing structure in

addition to leasehold surrender interest resulting from the construction of the structure.

Before discussing the fact that this position is inconsistent with the terms of the 1998 Act, NPS points out the administrative nightmare for both NPS and concessioners that would result if the commenters' position was adopted by NPS. Under the commenters' position, for example, every time a concessioner might replace a section of damaged drywall, or, replace missing shingles on a roof, a new leasehold surrender interest, including a new CPI calculation, would be established. For larger concession operations (one current operation utilizes almost 800 buildings), the number of these additional leasehold surrender interests could well be in the tens of thousands over the term of a twenty year concession contract. NPS does not consider that such a result, even if otherwise lawful, would be in the best interests of concessioners, NPS, or efficient management of the NPS concessions program.

NPS also notes that the expenditures that a concessioner may make for repair and maintenance of existing structures are not lost to the concessioner. To the contrary, repair and maintenance expenditures will necessarily be reflected in a lower depreciation deduction when the final leasehold surrender interest value for the structure is calculated. The concessioner, accordingly, will be compensated for its expenditures for repair and maintenance of existing structures even though the 1998 Act does not permit recognition of leasehold surrender interest as a result of repair and maintenance.

In any event, the view that additional leasehold surrender interest results from expenditures for repair and maintenance of existing structures is inconsistent with the express terms of the 1998 Act. Section 405(a) of the 1998 Act provides a leasehold surrender interest when a concessioner "constructs" a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract. The statute makes no mention of leasehold surrender interest resulting from the repair and maintenance of an existing capital improvement. "Construction" means "the process or manner of building an improvement." 3rd Edition, page 73. "Repairs" are "current expenditures for general upkeep of a property's condition and efficiency." 3rd Edition, p. 303. "Maintenance" means "keeping a

property in condition to perform its function." 3rd Edition, p. 217.

In addition, Section 405(a)(1) of the 1998 Act states that a concessioner shall have a leasehold surrender interest in "each capital improvement" it constructs. Section 405(e)(2) of the 1998 Act in turn defines "capital improvement" as "a structure, fixture, or non-removable equipment." In other words, the 1998 Act only provides a leasehold surrender interest in "structures, fixtures, and non-removable equipment" that a concessioner "constructs," *i.e.*, builds, under the terms of a concession contract. The law does not suggest that the repair or maintenance of an existing structure results in leasehold surrender interest.

NPS notes in this connection that Section 405(a)(5) of the 1998 Act states that when a concessioner that makes a "capital improvement" to an existing "capital improvement" in which the concessioner has a leasehold surrender interest, the cost of the additional capital improvement is to be added to the then current value of the concessioner's leasehold surrender interest. The proposed regulations and the final rule reflect this requirement by granting additional leasehold surrender interest for replacement of fixtures and non-removable property, additions to existing structures, and/or the major rehabilitation of existing structures. What the statute does not permit, however, is additional leasehold surrender interest for the repair and maintenance of existing structures (unless a repair and maintenance project is a major rehabilitation as defined in the final rule).

The position of the general concessioner organization, when reduced to its essentials, is that the 1998 Act, when stating that a leasehold surrender interest results from the "construction" of a "structure," means that every time a concessioner replaces a rotted beam or a damaged piece of drywall in a building, it has "constructed" a "structure" within the meaning of the 1998 Act. This position is not credible.

NPS considers, however, that providing leasehold surrender interest for the major rehabilitation of an existing structure is permissible under the terms of the 1998 Act as a major rehabilitation is defined in the final rule as a comprehensive rehabilitation of an existing structure the cost of which exceeds fifty percent of the pre-rehabilitation value of the structure. NPS, accordingly, considers that a major rehabilitation is tantamount to the construction of a new structure (or the addition of a new structure to an

existing structure) in which leasehold surrender interest may be obtained within the leasehold surrender interest limitations of the 1998 Act.

NPS notes that it changed the definition of major rehabilitation in the final rule. In the proposed regulations, the construction cost had to exceed one hundred percent of the pre-rehabilitation value of the structure. The final rule changes this to fifty percent of the pre-rehabilitation value. This change is intended to accommodate to the extent possible the concerns of commenters that seek leasehold surrender interest for repair and maintenance of structures, contrary to the terms of the 1998 Act. NPS considers that a rehabilitation of a structure where the cost exceeds fifty percent of the structure's pre-rehabilitation value is tantamount to construction of a new structure within the meaning of the 1998 Act and therefore eligible for leasehold surrender interest.

Likewise, the proposed regulations and final rule provide leasehold surrender interest for constructing an addition to an existing structure in which a concessioner has a leasehold surrender interest, e.g., a new wing to an existing building or an extension of an existing sidewalk. An addition is treated as a new structure for leasehold surrender interest purposes.

The general concessioner organization suggested that this section be modified in effect to state that if a concession contract contains a repair and maintenance reserve provision that there would be no depreciation deduction for related leasehold surrender interest value. This suggestion is contrary to the 1998 Act's definition of the value of leasehold surrender interest (which requires a deduction for depreciation) and is not valid as a general business matter. The fact that a repair and maintenance reserve exists does not mean that a structure will not undergo depreciation. Even very well maintained buildings depreciate over time. However, NPS considers that the existence of a repair and maintenance reserve will lessen the depreciation deduction that will occur with respect to related leasehold surrender structures. The repair and maintenance reserve, accordingly, in addition to ensuring that concessioner facilities are well maintained, makes good business sense.

The general concessioner organization also stated that any repair and maintenance reserve should be at levels that are commercially reasonable. NPS agrees and considers that the solicitation process for new concession

contracts will ensure that any repair and maintenance requirements of the new contract will be reasonable.

Finally, the general concessioner organization suggested that a repair and maintenance reserve provision contained in a concession contract should require that any balance in the reserve at the expiration of the contract should be retained by the incumbent concessioner. This matter will be addressed by NPS in the development of and consideration of public comments on its proposed standard concession contract.

This section has been changed in the final rule to delete references to the obligations of a concessioner to repair and maintain property. The references have been included in Section 51.81 in the final rule.

Subpart G—Possessory Interest (Subpart H in the final rule)

*Section 51.76 (Section 51.68 in the final rule). If a Concessioner Is Not Awarded a New Concession Contract, How Will a Concessioner That Has a Possessory Interest Receive Compensation for Its Possessory Interest?*

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*Section 51.77 (Section 51.70 in the final rule) If a Concessioner Is Awarded a New Concession Contract, What Happens to the Concessioner's Possessory Interest?*

Several comments objected to this section with respect to the fact that it contemplates NPS determining the value of the prior concessioner's possessory interest. However, NPS notes that the intention of the section was that the determination of the value by NPS is subject to the arbitration proceedings called for by Section 51.78 of the proposed regulations. NPS has changed the section in the final regulations to reflect that a determination of value of a prior concessioner's possessory interest is, in the first instance, to be accomplished by mutual agreement of the parties, and, if that fails, through arbitration proceedings.

The general concessioner organization objected to the element of this section that calls for the value of a prior concessioner's possessory interest to be determined on a unit by unit basis on the grounds that this may impact the overall value of an existing concessioner's possessory interest. NPS, in consideration of this comment, has changed this section in the final regulations to require allocation of possessory interest on a unit by unit basis if not determined initially on such basis. If negotiation of the allocation is

not successful, it will be subject to arbitration. Allocation on a unit by unit basis is necessary in order to provide for depreciation determinations and possible relinquishment of leasehold surrender interest in particular structures.

*Section 51.78 (Section 51.71 in the final rule) What Is The Process To Be Followed If There Is a Dispute Between the Prior Concessioner and the Director as to the Value of Possessory Interest?*

Several comments objected to elements of this section on the grounds that the limitations it places on the arbitration proceedings are unfair and unlawful. NPS has changed this section in the final regulations. The thrust of the changes is to require binding arbitration under procedures that are to be determined by the arbitration panel. The arbitration panel will adopt procedures it deems appropriate in the circumstances of the dispute in order to treat each party equally and to give each party the opportunity to be heard and a fair opportunity to present its case. The arbitration panel will utilize adjudicative procedures such as cross-examination of witnesses if the arbitration panel determines that adjudicative procedures are necessary in the particular circumstances of the dispute. The arbitration panel may also adopt appropriate provisions regarding confidentiality of information provided by the parties to the panel or to each other in connection with the arbitration proceeding.

These changes are consistent with the commercial arbitration rules of the American Arbitration Association ("AAA") which permit arbitration panels flexibility to adopt appropriate arbitration procedures so long as each party is treated equally and each party has the opportunity to be heard and a fair opportunity to present its case.

NPS feels strongly that in most circumstances the establishment of the value of possessory interest or other related matters subject to arbitration under the regulations is best achieved with efficiency, economy, and fairness by informal proceedings rather than full-blown adjudicative procedures. NPS does not consider that it is in the best interests of concessioners, particularly smaller concessioners, or NPS, to have the arbitrated values of leasehold surrender or possessory interests influenced by the party with the more skillful attorneys rather than the party with the more persuasive appraisal. The final regulations, however, do not bind the arbitration panel in this matter. An arbitration panel may adopt whatever procedures it sees fit under the AAA

standard included in the regulations, including AAA or another arbitration organization's adjudicative procedures.

NPS also feels strongly that the members of the arbitration panel should be qualified appraisers to ensure a professional determination on the appraisal issue. The general concessioner organization agreed with this view. However, the final regulations have been changed in this connection to require that only the neutral arbiter be a qualified appraiser so that a party may select their party arbiter as they see fit. In addition, NPS has deleted the requirement of this section regarding judicial review of an arbitration proceeding. The scope of judicial review will be determined by applicable law.

Several comments suggested that it is unfair or unlawful for NPS to establish the terms of the arbitration without the agreement of the affected concessioner. The changes described above relieve those concerns as they provide that the arbitration panel will establish the procedures to be followed. In any event, the commenters are wrong in their presumption that the affected concessioner will not agree to the procedures. The procedures are only applicable under the terms of a concession contract a person may choose to enter into after the effective date of the final rule. They are not applicable to any existing concession contract.

NPS also points out that the procedures described above are consistent with the applicable standard provision of NPS concession contracts entered into over at least the last thirty years. The standard provision calls for a dispute over the value of possessory interest to be determined by a panel of three appraisers after giving both parties an opportunity to be heard. All existing concessioners with possessory interest contract provisions have agreed to this provision under the terms of their concession contracts.

Finally, several comments suggested that the proposed arbitration provisions are inconsistent with the terms of the Federal Arbitration Act, 9 U.S.C. 14 *et seq.*, and the Alternative Disputes Act, 5 U.S.C. 571 *et seq.* However, neither of these Acts by their terms is applicable to NPS concession contracts.

NPS, for the sake of clarity, has moved the description of arbitration proceedings to Section 51.51 of the final rule.

*Section 51.79 (Section 51.72 in the final rule) If a New Concessioner is Awarded the Contract, What Is the Relationship Between Leasehold Surrender Interest and Possessory Interest?*

Several comments suggested changing this section to eliminate reference to the possibility of the leasehold surrender interest being based on the actual payment to the prior concessioner by the new concessioner for the prior concessioner's possessory interest. NPS has made this suggested change in the final regulations.

*Section 51.80 (Section 51.69 in the final rule) What Happens If There Is a Dispute Between the New Concessioner and a Prior Concessioner as to the Value of the Possessory Interest?*

Several comments objected to the fact that this section requires a new concessioner to obtain NPS approval before agreeing to the value of possessory interest with a prior concessioner and to allow NPS to assist it in any procedures for resolution of the possessory interest value. The comments suggest that this interferes with the rights of the prior concessioner. NPS disagrees. The section imposes no obligations on the prior concessioner nor does it restrict its rights to receive payment for its possessory interest in accordance with the terms of its contract. Further, it certainly is within the rights of a new concessioner to agree that a third party has prior approval rights over a negotiated purchase price and/or to assist it in a dispute resolution process.

NPS notes that this provision is essential in order to ensure that the new concessioner negotiates or engages in dispute proceedings on an arm's length basis. Without the approval right of NPS or the right to assist in dispute proceedings, a new concessioner and a prior concessioner could collude to inflate the value of a possessory interest that NPS would indirectly be obliged to pay.

This is because the amount of money that a new concessioner has to pay for a prior concessioner's possessory interest directly affects the amount of money the new concessioner will be able to make available as a business matter under the terms of the new concession contract (for new improvements, new equipment, franchise fees, etc).

Several comments also suggested that a dispute about the amount of possessory interest compensation a concessioner is to obtain if it is not awarded a new concession contract should be resolved by the concessioner

and NPS, not by the prior concessioner and the new concessioner. However, 1965 Act concession contracts call for dispute resolution between the new concessioner and the prior concessioner. NPS cannot change this provision without the agreement of the concessioner. NPS will consider resolving directly the value of a possessory interest with an existing concessioner at the request of the concessioner.

A new sentence has been added to this section in the final rule making clear that nothing in this part is to be construed as authorizing a new concessioner to refuse to pay a prior concessioner for possessory interest in accordance with the terms of a possessory interest concession contract.

*Subpart H—Concession Contract Provisions (Subpart I in the final rule)*

*Section 51.81 (Section 51.73 in the final rule) What Is the Term or Length of a Concession Contract?*

Several comments questioned the content of this section as changing the intent of Congress as expressed in Section 404 of the 1998 Act. In response, NPS has modified this section in the final rule to more closely reflect the terms of Section 404 and to make clear that it is NPS policy to establish the term of concession contracts to be as short as prudent in the circumstances of each concession contract. NPS considers that this policy is consistent with the purposes of the 1998 Act, particularly its purpose of enhancing competition in concession contracts. Long term concession contracts (where a need for a long term does not exist) equate to less competition.

A comment suggested that all outfitter and guide concession contracts should have a term of ten years on the basis of outside investments outfitter and guide concessioners may have to make. NPS has not accepted this suggestion. NPS will determine terms of outfitter and guide concession contracts on the same basis as other concession contracts, giving due consideration to the particular circumstances of each concession contract.

*Section 51.82 (Section 51.74 in the final rule). When May a Concession Contract Be Terminated by the Director?*

A comment requested clarification as to what termination procedures will be included in concession contracts. The standard NPS concession contract published for comment on September 3, 1999, contains the termination clause NPS proposes to use in standard concession contracts. The comment also

asked NPS to explain why the concessioner is not afforded a right of termination in the event of default by NPS. This is because a concessioner has legal rights to terminate a concession contract in accordance with general contract law in the event of a material breach by NPS.

Several comments objected to this section on the general grounds that it gives NPS too much authority to terminate concession contracts. NPS considers that having the ability to terminate a concession contract when necessary to achieve the purposes of the 1998 Act is necessary in order to properly carry out the purposes of the 1998 Act. NPS has changed this section in the final regulations to refer to the purposes of the 1998 Act rather than the purposes "of this part."

Another comment suggested changes to this section to require a right to cure in case of default or unsatisfactory annual evaluations. The standard concession contract published for public comment describes the right to cure provisions in its termination clause.

*Section 51.83 (Section 51.75 in the final rule) May the Director Split or Combine Concession Contracts?*

Several comments suggested that combining concession contracts should not be undertaken by NPS if the result would be the loss of a preference in renewal. NPS considers that the sentence to which the comments objected is appropriate. However, it has been deleted in the final rule as unnecessary.

One comment suggested that this section misstates Section 417 of the 1998 Act by imposing a blanket prohibition on segmenting concession contracts if the result would be a concession contract with gross receipts under \$500,000. Another comment questioned why this segmentation rule was applicable to outfitter and guide concession contracts when Section 417 only addresses concession contracts with gross receipts under \$500,000.

In response to these comments, NPS has amended this section to state that NPS will not segment concession contracts for the purpose of establishing a concession contract with gross receipts of less than \$500,000.

*Section 51.84 (Section 51.76 in the final rule) May the Director Include in a Concession Contract or Otherwise Grant a Concessioner a Preferential Right To Provide New or Additional Visitor Services?*

A number of comments were received that addressed this section. Almost all

misunderstood it. Accordingly, NPS has clarified it in the final regulations. However, the section did and does not do what the comments perceived. The section only precludes the inclusion of a contractual right in a contract that requires that any new or additional services be offered to the incumbent concessioner. This tracks the requirements of Section 403(9) of the Act. Several comments also asked for amplification of the term "new or additional services." NPS considers that further amplification is unnecessary in light of the clarifications made to this section in the final rule.

NPS also notes that several commenters understood this section to have application to a right of preference to a new contract. This is not the case. The section only concerns the addition of new services under the terms of an existing concession contract.

Several commenters understood this section to mean that a concession contract may not be amended to include additional services. This is not the case. NPS has added a sentence to this section in the final rule to permit by contract amendment minor additions to the visitor services authorized by a contract that are a reasonable extension of the existing services. This language tracks relevant legislative history. H.R. Rep. No. 105-767 at p. 41(1998).

*Section 51.85. (Section 51.77 in the final rule). Will a Concession Contract Provide a Concessioner an Exclusive Right to Provide Visitor Services?*

Several comments objected to this section on the grounds that concession contracts are intended to grant exclusive rights to provide specified visitor services. This is not the case. NPS concession contracts authorize concessioners to provide specified visitor services but do not grant exclusive rights.

The general concessioner organization, although its comment indicated that it understood this section, objected to it on the grounds that it may be in the best interests of NPS to grant exclusive concession contracts. NPS does not consider this to be the case. An exclusive right establishes a monopoly situation that NPS considers contrary to the public interest.

*Section 51.86 (Deleted in the final rule). Is There a Special Rule for Transportation Contracts?*

This section has been deleted in the final rule as unnecessary in light of Section 412 of the 1998 Act.

*Section 51.87 (Deleted in the final rule). Where Will the Director Deposit Franchise Fees and How Will the Director Use the Franchise Fees?*

The general concessioner organization objected to the inclusion of "visitor support activities" as an authorized use for expenditure of franchise fees by NPS. It objected because this category is not specified in the 1998 Act, and, because "it could have a very broad meaning inconsistent with the intent of the 1998 Act." NPS disagrees with this view and notes that NPS may expend funds for needed visitor facilities in park areas from the franchise fee accounts established by the 1998 Act. This includes the construction of facilities (e.g., parking lots, access roads, and sewer systems) that directly support the operations of a concessioner. However, this section has been deleted in the final rule as unnecessary.

*Section 51.88 (Section 51.78 in the final rule and retitled.) Will Franchise Fees be Subject to Renegotiation?*

Several comments suggested that this section be clarified to make clear that either the concessioner or NPS may request an adjustment of the franchise fee. This change has been made in the final rule, and, consistent with this change, the final rule also clarifies that a determination as to the existence of extraordinary, unanticipated changes must be made mutually by the concessioner and NPS.

A commenter also objected to the last sentence of this section as it implies that a franchise fee adjustment is appropriate in all circumstances where an adjustment has been requested. This section has been clarified in the final regulations in accordance with these comments.

A comment suggested that the phrase "extraordinary, unanticipated changes" be defined in the final rule. NPS has not accepted this suggestion in light of the wide variety of circumstances that may trigger a request for an adjustment of a franchise fee under this section.

Another comment asked whether this section is applicable to 1965 Act concession contracts. It is not, as 1965 Act concession contracts have a different franchise fee adjustment clause under a differing provision of the 1965 Act.

NPS, in response to public comments, has also added a subsection (a) to this section to track the terms of Section 407(a) of the 1998 Act regarding franchise fees.

*Section 51.89 (Section 51.79 in the final rule) May the Director Waive Payment of Franchise Fees or Other Payments?*

Several comments objected to this section on the grounds NPS should have flexibility to waive franchisee fees.

NPS generally does not consider waiver of franchise fees appropriate, especially in light of Section 407 of the Act. However, it has added a phrase to this section in the final rule that permits a limited partial waiver of franchise fees if permissible under established administrative guidelines for the purpose of recognizing exceptional concessioners.

*Section 51.90 (Section 51.80 in the final rule) How Will the Director Establish Franchise Fees for Multiple Outfitter and Guide Concession Contracts in the Same Park Area?*

Several commenters objected to this section because it did not reflect their view that Section 411 of the 1998 Act exempts outfitter and guide concession contracts from competition under principal selection factor (5), the amount of the franchise fee offered in a concession contract proposal. However, Section 411 makes no mention of such an exemption. Rather, it states that where multiple outfitter and guide concession contracts are to be awarded in a particular park area concerning the same or similar services, NPS is to establish a comparable franchise fee for such contracts. NPS will do this on a park-by-park basis in the course of its development of franchise fees to be included in prospectuses for new concession contracts. This section was also criticized for failing to give sufficient guidance as to what services are the "same or comparable." This is a matter that is best determined on a case-by-case basis.

*Section 51.91 (Section 51.81 in the final rule). May the Director Include "Special Account" Provisions in Concession Contracts?*

The general concessioner organization, although not objecting to the concept of a repair and maintenance reserve as described in this section, repeated its objections directed to other sections to the effect that repair and maintenance of leasehold surrender interest capital improvements results in additional leasehold surrender interest. The commenter also reiterated its position that any expenditures from repair and maintenance reserves should be deducted from the depreciation element of leasehold surrender interest when valuing leasehold surrender

interest. NPS disagrees for the reasons discussed under Section 51.75.

A comment objected to the concept of repair and maintenance reserves because they allegedly will become a means for direct fee bidding in the prospectus process. NPS does not agree with this view and notes that required maintenance and repair reserves are a standard practice in the commercial real estate industry.

A comment objected to the element of this section that requires the concessioner to repair and maintain all concessioner facilities assigned to it under the terms of the concession contract. The comment asked whether this includes infrastructure assigned to the concessioner and stated that basic infrastructure should be constructed and maintained by NPS. NPS notes that concessioners are assigned a variety of facilities for use in their operations, including, occasionally, basic infrastructure. This has been NPS practice for many years. NPS considers it appropriate that NPS concession contracts require a concessioner that utilizes government property in its business to maintain and repair the property.

A comment suggested that all "special accounts" be forbidden, e.g., "resource protection" funds, as they are a means for NPS to indirectly engage in franchise fee bidding. NPS has not accepted this suggestion. In circumstances where it is otherwise permissible under the 1998 Act or other law, a provision in a concession contract requiring the concessioner to make expenditures from its gross receipts for specified purposes is an appropriate means to carry out the purposes of the 1998 Act.

NPS has added to this section in the final rule the repair and maintenance obligations of concessioners set forth in Section 51.75 of the proposed regulations.

NPS has also added a sentence to this section in the final rule to make clear that repair and maintenance reserve provisions are not to be included in concession contracts in lieu of a franchise fee and funds from such reserves are to be expended only for the repair and maintenance of real property improvements assigned to the concessioner for use in the concessioner's operations.

*Section 51.92 (Section 51.83 in the final rule.) Handicrafts [Reserved]*

This section was reserved as NPS is in the process of developing regulatory guidelines for handicraft sales under Section 416 of the 1998 Act with the advice of the National Park Service Concessions Management Advisory

Board established by Section 409 of the Act.

The general concessioner concessioner organization commented on this section, stating that it should have the right to comment on the proposed handicraft regulations prior to the finalization of the proposed general concession regulations. NPS has published these final regulations prior to the date of possible publication of proposed handicraft regulations. NPS did not consider it to be in the public interest to delay finalization of these general regulations as requested by the general concessioner organization. Numerous concessioners are currently operating under short term extensions of existing contracts. Any delay in the promulgation of the final general concession regulations would have a detrimental effect on not only park visitors but many concessioners as well.

*Subpart I—Assignment or Encumbrance of Concession Contracts (Subpart J in the final rule)*

*Section 51.93 (Section 51.84 in the final rule) What Special Terms Do I Need To Know To Understand This Part?*

The comments received did not directly address the proposed definitions contained in this section. Several comments expressed concerns about some of the definitions indirectly. These comments are addressed under the relevant sections of this subpart.

*Section 51.94 (Section 51.85 in the final rule) What Assignments Require the Approval of the Director?*

Comments stated that the 1998 Act does not allow approval of an encumbrance of a concessioner's revenue stream as contemplated by this section. NPS has deleted as unnecessary the reference to approval of revenue streams in the final rule. This section and other sections within this subpart have been amended accordingly. However, the treatment of revenue streams will necessarily be a consideration in the approval of encumbrances that must be approved in accordance with the requirements of this part under the final rule.

Several comments stated that the 1998 Act does not address approval of a controlling interest in a concession contract, requesting that reference to approval of controlling interests be deleted from this and other sections of the proposed regulations.

NPS has not made this requested change. Requiring approval of the assignment of controlling interests is essential in order to effectuate the purposes of the 1998 Act with respect

to its admonitions that only qualified persons are entitled to own NPS concessions.

In this connection, Section 408(a) of the 1998 Act states as follows:

(a) APPROVAL OF THE SECRETARY.—No concessions contract or leasehold surrender interest may be transferred, assigned, sold or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary. (Emphasis added).

The “controlling interest” element of this section is generally directed to corporate concessioners. Basically, it recognizes that a concession contract may effectively be conveyed or pledged by a corporate concessioner (“otherwise conveyed or pledged” under the terms of Section 408(a)) without any legal transfer, assignment or sale of a concession contract *per se* held by a corporate concessioner.

If Section 408(a) of the 1998 Act were interpreted to forbid approvals of the transfer of a controlling interest in a corporation that holds a concession contract, only transfers of concession contracts that are held by individuals or partnerships would be subject to NPS approval. A corporate concessioner need only sell its stock to a new party (sale of a controlling interest) in order to effectuate a transfer of the concession contract. Congress did not intend such an anomalous result. Section 408(b) of the 1998 Act (set forth below) describes the statutory intentions for requiring the approval of the transfer of concession contracts by forbidding approval of a transfer by NPS if:

(1) the individual, corporation or entity seeking to acquire a concession contract is not qualified or able to satisfy the terms and conditions of the concession contract;

(2) such transfer or conveyance is not consistent with the objectives of protecting, conserving, and preserving the resources of the unit of the National Park System and of providing necessary and appropriate visitor services at reasonable rates and charges; or

(3) the terms of such transfer or conveyance are likely, directly or indirectly, to reduce the concessioner’s opportunity for a reasonable profit over the remaining term of the contract, adversely affect the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of such facilities and services.

The position of the comments concerning transfer of controlling interests in concession contracts would nullify these congressional intentions. This is not a hypothetical concern. Many NPS concessioners are corporations that hold a concession contract as their exclusive business activity. In addition, almost all of the

largest NPS concessioners are wholly owned subsidiaries of larger corporations. If NPS accepted the position of the commenters, NPS would have no right of approval of the transfer by sale of stock of the Yosemite, Yellowstone, Grand Canyon, Grand Teton, Glen Canyon, Glacier, and Mesa Verde National Park concession contracts, among others.

In any event, NPS considers that the phrase “or otherwise conveyed or pledged” directly encompasses the inclusion of controlling interests in this section. NPS also notes that the “controlling interest” concept was contained in 36 CFR Part 51 under the terms of the 1965 Act. Congress must be presumed to have been aware of this in considering the 1998 Act.

Another commenter made essentially the same argument with respect to inclusion in the regulations of a right to approve management contracts a concessioner might enter into. NPS considers it must have the ability to review management contracts for the reasons discussed with respect to controlling interests. Congress did not intend that the most qualified offeror be selected for award of a concession contract only to permit the selected qualified concessioner to turn over management to a third party with no right of NPS to determine that the third party is qualified. NPS considers that it has ample authority to require approval of arrangements under which a third party is to operate a concession under the 1998 Act and 16 USC 1 *et seq.*

NPS notes that Section 408(b) of the 1998 Act uses the word “and” instead of “or” between the second and third determinations that are required for approval of an assignment or encumbrance. NPS has interpreted this in the regulations as “or” in light of the legislative history of this section and the fact that the word “and,” perhaps, and anomalously, could be read as requiring NPS to approve transactions that are detrimental to the resources of the park area or to park area visitors. No commenters on the proposed regulations questioned this interpretation.

*Section 51.95 (Section 51.86 in the final rule) What Encumbrances Require the Approval of the Director?*

Several comments repeated under this section their similar objections directed to Section 51.94. The changes made to Section 51.94 have also been made to this section in the final regulations. In addition, NPS has deleted subsection (f) of this section in the final regulations in response to public comments.

*Section 51.96 (Section 51.87 in the final rule) Does the Concessioner Have an Unconditional Right To Receive the Director’s Approval for an Assignment or Encumbrance?*

Several comments suggested that the preliminary language in this section be amended to more accurately reflect Section 408 of the 1998 Act, that approval of an assignment or encumbrance is to be granted by NPS unless NPS makes a determination that the approval conditions contained in Section 408 are not met. NPS has made this change in the final rule.

Several comments requested modification of the limitations on the purposes for which encumbrances may be approved. In this connection, Section 405(a)(2)(A) of the 1998 Act provides that a leasehold surrender interest:

May be pledged as security for financing of a capital improvement or the acquisition of a concession contract when approved by the Secretary of the Interior pursuant to this section.

The limited purposes for which a leasehold surrender interest may be pledged were the primary basis of the encumbrance limitations contained in the proposed regulations. In response to comments, this section has been modified in the final regulations to broaden the purposes for which encumbrances may be made consistent with the purposes and requirements of the 1998 Act.

*Section 51.97 (Renumbered as Section 51.88 in the final rule) What Happens If an Assignment or Encumbrance Is Completed Without the Approval of the Director?*

NPS has deleted reference to concessioner revenues from this section in accordance with the discussion under Section 51.93.

*Section 51.98 (Section 51.89 in the final rule) What Happens If There Is a Default on an Encumbrance Approved by the Director?*

\* \* \* \* \*

*Section 51.99 (Section 51.90 in the final rule) How Does the Concessioner Get the Director’s Approval Before Making an Assignment or Encumbrance?*

Several comments suggested that this section’s prior approval requirements insert NPS into a concessioner’s business transactions before the transaction is completed. However, Section 408 of the 1998 Act requires written notification and approval before assignments and encumbrances are completed. The changes reducing the scope of transactions subject to NPS

approval under the final regulations will alleviate the concerns of the commenters.

*Section 51.100 (Section 51.91 in the final rule) What Information Will the Director Require in the Application?*

A number of commenters complained that the information requirements imposed by this section are too burdensome. NPS, in response to these comments, has reduced the information described in this section and has worded the section so as to require submission of information only to the extent requested by NPS as necessary in the circumstances of a particular transaction. NPS, in response to comments, has also modified the scope of the information requirements in a number of respects and has deleted subsection (c) in the final regulations. NPS considers that the remaining information requirements are necessary in order to assist in making the determinations required by Section 408 of the 1998 Act. A comment suggested that the word "reasonably" be included in this section to limit what information the Director may request. NPS has not made this change because under applicable law, NPS decisions made pursuant to this part must have an appropriate basis.

The general concessioner organization made a number of specific suggestions regarding the information requirements of this section. They are responded to as follows:

The commenter suggested that NPS should not be provided the actual transaction documents regarding an assignment or encumbrance but should rely on a narrative description of the transaction to be submitted by the concessioner. NPS considers that it must have access to the actual transaction documents in order to be able to make the determinations required by Section 408 of the 1998 Act.

The commenter requested that this section be limited to an opinion of counsel that only goes to the authority of the contracting party and the enforceability of the contract. NPS considers that the broader wording of this section is appropriate. If a proposed acquisition of a concession contract is unlawful, this impacts on the qualifications and ability of the acquiring party to satisfy the conditions of the concession contract within the meaning of Section 408.

The commenter suggested that the last clause of subsection (c) is duplicative. NPS has deleted it.

The commenter objected to the requirement of subsection (g) to the effect that a narrative description of the

transaction is required. The commenter suggested that the narrative description of the financial aspects of the transaction as required by Subsection (c) should suffice for NPS purposes. NPS considers that aspects of a transaction beyond financial considerations are very relevant under the approval conditions of Section 408. This provision has not been changed in the final rule.

The commenter suggested changes and a clarification of subsection (h). This section has been clarified accordingly and the requirement for review by an independent accounting firm deleted as requested by the commenter.

The commenter objected to the allocations required by subsection (i). Subsection (i) has been edited in the final rule to delete a specific list of allocations. The general allocation information is needed in connection with the NPS responsibility to determine that the terms of the transaction will not reduce the concessioner's opportunity for a reasonable profit. It is usual practice when examining the financial implications of purchases of stock or assets to review the allocations of the purchase price among particular asset classes.

The commenter suggested several changes to the times included in subsection (j). NPS has generally made the commenter's requested changes in the final rule. The new times established are considered appropriate by NPS in the circumstances of NPS concession contracts.

The commenter requested deletion of subsection (k). It has been deleted in the final rule.

The commenter requested deletion of subsection (l). NPS has not deleted it. Given the variety of circumstances that may relate to assignment or encumbrance of NPS concession contracts, flexibility in requesting information must be retained.

Another commenter requested that the regulation make clear that the information submitted is confidential. NPS has not made a change to this section in this connection because the extent to which information submitted to NPS by a concessioner is available to the public is determined by the requirements of the Freedom of Information Act and related laws, including the 1998 Act.

*Section 51.101 (Deleted in the final rule) May the Director Waive Any of These Documentation Requirements?*

This section has been deleted in the final regulations in light of the changes made to Section 51.100.

*Section 51.102 (Section 51.92 in the final rule) What Are Standard Proformas?*

Several comments suggested that the standard proformas that are encouraged but not required to be submitted pursuant to this section do not conform to standard business practice because they call for loans to be amortized during the remaining term of the concession contract. NPS notes, however, that Section 408 of the 1998 Act states that an approval of assignments or encumbrances may not be granted if, among other matters, the transaction is "likely to reduce the concessioner's opportunity for profit over the remaining term of the contract."

NPS, nonetheless, in response to these comments, has made a change to this section in the final rule to the effect that a standard pro-forma, if it does not call for amortization of a loan over the remaining term of the contract, must explain why this fact is not inconsistent with the considerations stated in Section 51.87(h) of the final rule.

Another commenter suggested that the responsibility of the NPS to approve transactions with respect to a concessioner's opportunity for profit should be limited to circumstances where NPS determines that a negative effect would result from an unprofitable operation. This interpretation, however, is in conflict with the plain language of the statute.

NPS has also changed this section in the final regulations by deleting subsection (d) in response to comments.

*Section 51.103 (Deleted in the final rule) If the Concessioner Submits a Non-Standard Proforma, Is the Director More Likely To Disapprove the Transaction?*

Because of the changes made to Section 51.92 in the final rule, this section has been deleted in the final rule.

*Section 51.104 (Section 51.93 in the final rule) If the Transaction Includes More Than One Concession Contract, How Must Required Information Be Provided?*

\* \* \* \* \*

*Section 51.105 (Deleted in the final rule) In What Circumstances Will the Director Not Approve an Assignment or Encumbrance?*

Several comments misunderstood subsection (a) to mean that a concessioner may not obtain a bank loan without NPS approval of the bank as qualified to operate a concession. This is not the case. However, in case of foreclosure, a new operator selected by

the bank would have to be approved by NPS as qualified. The final rule makes this clear in Section 51.87(c).

A comment requested that time limits for approval of a transaction be imposed in this section. NPS does not consider this to be practical given the scope and variety of transactions that are subject to approval under the terms of the 1998 Act.

Another comment suggested that NPS should rely on banks with respect to the reasonable opportunity for a profit aspect of a transaction approval. In other words, the comment suggested that if a bank will make a loan for a concession transaction, NPS should automatically agree that it does not reduce the concessioner's opportunity to make a reasonable profit. NPS has not accepted this suggestion. In the first instance, adopting such a rule would be an abrogation of its responsibilities under the 1998 Act. Moreover, the fact that a bank may choose to make a loan relating to a concession transaction by no means ensures that the terms of the transaction will not reduce a new concessioner's opportunity to earn a reasonable profit over the remaining term of the concession contract. The general test for a bank loan is whether the lender will receive the principal and interest on its loan. In addition, a loan may be secured by unrelated assets (personal guarantees, stock pledges, etc.) that make the loan secure but do not necessarily indicate that the concessioner has not reduced its reasonable opportunity for a profit in committing to the transaction. NPS in reviewing transactions will take into account the fact that a bank loan is involved.

NPS has deleted this section in the final rule and moved its content to Section 51.87 in the final regulation for the sake of clarity.

*Section 51.106 (Section 51.94 in the final rule) What Information Will the Director Consider When Deciding To Approve a Transaction?*

This section has been modified in the final rule to clarify that NPS may consider information other than that submitted by the concessioner in determining whether to approve an assignment or encumbrance.

*Section 51.107 (Section 51.95 in the final rule) Does the Director's Approval of an Assignment or Encumbrance Include Any Representations of Any Kind?*

A sentence has been added to this section in the final rule to clarify that

approval of an assignment or encumbrance does not alter the terms of the applicable concession contract unless expressly so stated by NPS in writing.

*Section 51.108 (Section 51.96 in the final rule) May the Director Amend or Extend a Concession Contract for the Purpose of Facilitating a Transaction?*

\* \* \* \* \*

*Section 51.109 (Section 51.97 in the final rule) May the Director Open To Renegotiation or Modify the Terms of a Concession Contract as a Condition of the Approval of a Transaction?*

\* \* \* \* \*

*Section 51.110 (Deleted in the final rule)—May the Director Charge a Fee for the Review of a Proposed Transaction?*

NPS has deleted this section in response to comments.

*Subpart J—Information and Access to Information (Subpart K in the final rule)*

*Section 51.111 (Section 51.98 in the final rule) What Records Must the Concessioner Keep and What Access Does the Director Have To Records?*

Several comments objected to this section with respect to the fact that it applies to related records of parent or affiliated entities of a concessioner. In response, NPS has deleted the references except in circumstances where a concessioner parent or affiliate makes representations or commitments to NPS regarding its support or responsibilities to a concessioner. Access to records of the parent or affiliate in these limited circumstances is necessary in order for NPS to be able to reasonably rely on the representations or commitments.

*Section 51.112 (Section 51.99 in the final rule) What Access To Concessioner Records Will the Comptroller General Have?*

This section has been amended in accordance with the changes to Section 51.111.

*Section 51.113 (Deleted in the final rule) What Information Will the Director Make Publicly Available About the Concessioner and the Concession Contract?*

A number of comments raised confidentiality concerns about this section, arguing that it is in violation of the Freedom of Information Act. NPS has deleted this section in the final rule but moved certain of its information requirements to Section 51.5(f) in the

final rule. The specific information requirements that are retained are those that were contained in 36 CFR Part 51 prior to this amendment. Other information listed in the proposed regulation has been deleted in the final rule in response to comments. Particularly, the reference to the existing concessioner's net profit has been deleted.

However, NPS considers that Section 403(3)(6) of the 1998 Act precludes NPS from exercising exemptions to the Freedom of Information Act with respect to release of information provided to NPS by a concessioner if NPS determines that the release of the information is necessary to allow for the submission of competitive proposals. NPS considers that the information requirements now contained in Section 51.5(f) in the final rule are necessary for this purpose. These specific information requirements (carried over from the existing 36 CFR Part 51) represent at least some of the information about the general scope of a business that a competitor needs in order to submit a competitive proposal.

*Section 51.114 (Section 51.100 in the final rule) When Will the Director Make Proposals and Evaluation Documents Publicly Available?*

This section has been edited by inserting the introductory phrase "in the interests of enhancing competition" to make clear its intentions. The purpose of this section is to avoid actions that may have anti-competitive results, e.g., where, in the course of a contested selection of the best proposal submitted in response to a prospectus, a competitor seeks to obtain a copy of the best proposal that it may then utilize to enhance its proposal in the event a resolicitation of the contract opportunity is required. This is not only unfair to the offeror that submitted the best proposal in the first instance, but also inhibits legitimate competition in the award of concession contracts, contrary to the purposes of the 1998 Act.

One commenter, a municipality that holds a concession contract, suggested that all concession contract proposals be made public upon receipt as it is obliged to make its proposal public because of its status as a municipality. NPS has not accepted this suggestion for the reasons discussed above regarding the need to maintain the confidentiality of proposals.

Subpart K—The Effect of the 1998 Act's Repeal of the 1965 Act (Subpart L in the final rule)

*Section 51.115 (Section 51.101 in the final rule) Did the 1998 Act Repeal the 1965 Act?*

NPS has changed this section in the final rule to clarify that this part as well as the 1998 Act applies to 1965 Act concession contracts except to the extent that its provisions are inconsistent with particular terms and conditions of a 1965 Act concession contract.

*Section 51.116 (Section 51.102 in the final rule) What Is the Effect of the 1998 Act's Repeal of the 1965 Act's Renewal Preference?*

This section is discussed in the General Comments section. As stated, NPS considers that the 1998 Act's repeal of the 1965 Act, including its requirement in Section 5 that NPS give existing satisfactory concessioners preference in renewal of their contracts, applies to the holders of 1965 Act concession contracts. This section of the proposed regulations, however, permits a concessioner to appeal this decision to the Director if a 1965 Act concession contract expressly references a preference in renewal. In circumstances where a 1965 Act concession contract does not make express reference to a preference in renewal, it is the final administrative decision of NPS, based on the considerations discussed in the General Comments section, that the repeal of the 1965 Act's preference in renewal by the 1998 Act is applicable to holders of 1965 Act concession contracts.

This section has also been changed in the final rule to track the language of Section 415 so as to avoid any concern that NPS misinterpreted its meaning with respect to the phrase "inconsistent with the terms and conditions of any such contract or permit." Finally, in response to a comment discussed under Section 51.49 to the effect that a concessioner holding a 1965 Act concession contract not only has a continuing right to a right of preference in renewal, but, also, has a "right" to not submit a responsive proposal in response to a prospectus, a sentence has been added to the final rule to clarify that if an appeal is successful under this section, or if a court determines that a concessioner holding a 1965 Act concession contract does have a preference in renewal, that the otherwise applicable terms and conditions of this part regarding the exercise of a preference in renewal, including, without limit, the obligation

to submit a responsive proposal, apply to any preference in renewal recognized with respect to holders of 1965 Act concession contracts. NPS considers that it has authority to adopt these requirements under the 1998 Act and, in addition, under 16 USC 1 *et seq.* (with particular reference to 16 USC 3).

By providing this appeal right, NPS does not seek to lead existing concessioners to believe that it is likely that they would qualify for an appeal under this section. To the best of the knowledge of NPS, no 1965 Act concession contract or permit with annual gross receipts of more than \$500,000 references a preference in renewal. However, there may be exceptions in which case this section of the final rule will apply.

To avoid requiring concessioners to make administrative appeals that are likely to be unsuccessful, NPS has deleted the sentence in subsection (b) of this section in the proposed regulations that stated that a concessioner must make an appeal under this section in order to be considered as having exhausted administrative remedies with respect to denial of a renewal preference regarding 1965 Act concession contracts. In its place, a sentence has been added to the final rule making final the decision of NPS regarding the repeal of the 1965 Act's preference in renewal with respect to holders of 1965 Act concession contracts.

*Section 51.117 (Deleted in the final rule) What Renewal Preference Exceptions Are Made for Glacier Bay Cruise Ships?*

A comment asked why this section provides an exemption for Glacier Bay cruise ships and requested a similar exemption for other concessioners in "exceptional circumstances." The Glacier Bay exemption was established by Section 419 of the 1998 Act. NPS has no authority to grant similar exemptions from the requirements of the 1998 Act.

This section has been deleted in the final rule in light of Section 419 of the Act.

Subpart L—Information Collection [Subpart M in the final rule]

*Section 51.118 (Section 51.104 in the final rule) Have Information Collection Procedures Been Followed?*

\* \* \* \* \*

### 3. Additional Comments and Changes

In addition to this discussion of changes made to the proposed regulations, NPS points out that it has added several clarifying sections to the final rule, including new Sections 51.27 and 51.28, to set forth definitions of

terms used in the final rule. It has also added a severability clause in new Section 51.103 of the final rule.

NPS has also added a new Section 51.81 regarding concessioner rate approvals. The new section reiterates most of the rate approval requirements of Section 406 of the 1998 Act. Although NPS administers concessioner rate approvals under administrative guidelines, it has included the text of Section 406 in the final rule so that the final rule is self-explanatory with respect to the nature of rate approvals. NPS considers that its rate approval process requires significant administrative flexibility and therefore is best managed under administrative guidelines, not regulations.

The general concessioner organization suggested that NPS adopt new rate approval policies and procedures without waiting for the advice of the National Park Concessions Management Advisory Board as is contemplated by Section 406(c) of the 1998 Act. NPS has not accepted this suggestion. The recommendations of the Advisory Board are critical to the development of an effective rate approval program under the policies expressed in 1998 Act.

A commenter requested that NPS consider its views and republish the proposed regulations for further public comment. NPS notes that it has accommodated many of the concerns of the commenter through incremental changes in the final rule. However, NPS has determined not to reissue the proposed regulations for further public comment. There is an urgent need to recommence concession contracting actions that were necessarily halted in November of 1998 in order to promulgate contracting regulations under the new law. More than 280 of the 630 NPS concession contracts are operating under contract extensions as of January 1999. Both the concessioners and NPS are in need for the contracting process to resume so that new full term concession contracts may be awarded. Concessioners in general dislike operating on extended contracts with no certainty as to the future.

Particularly, concessioners are reluctant to make capital investments under extended concession contracts and have difficulty in retaining experienced employees in light of the uncertainties created by contract extensions. In addition, the public has an obvious need for concession operations to be stabilized under new full term concession contracts. NPS published the proposed regulations for comment as a matter of policy. The regulations are exempt from mandatory publication as proposed regulations

under 5 U.S.C. 553(b)(B) as regulations relating to government agency contracts and public property. Even if the regulations were required to be republished as proposed, it is considered that this would be impractical and contrary to the public interest in light of the backlog of contracting actions that face NPS.

NPS also considers that solicitation of further public comments is unnecessary and not in the public interest. NPS has fully considered the public comments received and has made incremental modifications to the proposed rule that reflect these comments. The final rule, in the view of NPS, is a logical outgrowth of the proposed regulations in consideration of public comments. Further opportunity for public comment would be detrimental to concessioners and visitors to park areas, and, would not, in the view of NPS, significantly alter the content of the final rule. A delay in the commencement of concession contracting under the 1998 Act may make it impossible for NPS to award a number of expiring concession contracts this year (in light of the length of time required to solicit and award concession contracts), thereby requiring further, otherwise unnecessary, contract extensions.

An environmental consulting firm suggested including in numerous places in the proposed regulations specific references to environmental protection matters. NPS has not done this as references in the regulations to "protection of resources," etc., include by implication the commenter's environmental concerns.

Several comments objected to the fact that the proposed regulations do not include provisions regarding the NPS Concessions Management Advisory Board established by Section 409 of the 1998 Act. However, there is no need for regulations governing this Board. Its activities are described by Section 409 and the Board's administrative charter.

A comment asked why the regulations make no reference to NPS 48, the NPS internal guidelines for concessions management. The regulations do not mention NPS 48 as there is no need for them to do so. Administrative guidelines are necessarily subordinate to the content of the regulations.

Several comments asked NPS to rule in the final regulations on the status of particular concessioners or classes of concessioners under varying provisions of the regulations. NPS has not done this. The final rule establishes the framework for concession contracting decisions. Particular decisions must be made as the need arises after finalization of the regulations.

A comment criticized the proposed regulations for not describing how NPS intends to carry out Section 410 of the 1998 Act. Section 410 requires NPS, to the maximum extent possible, to contract with private entities to assist NPS in the conduct of elements of the NPS concessions management program that are considered to be suitable for non-governmental performance. NPS has not made changes to the regulations in light of this comment. Decisions as to what elements of NPS concessions management should be contracted to third parties are administrative in nature.

Several comments criticized the fact that NPS published for public comment its proposed new standard concession contract after publishing the proposed regulations for public comment. The comments suggested that it is difficult to fully comprehend the proposed regulations in the absence of the proposed new standard concession contract. NPS does not agree with this view as the standard concession contract is subordinate to the terms and conditions of the regulations. NPS also notes that it is under no obligation to publish its standard concession contract for public comment. It does so as a matter of policy. In any event, the proposed new standard concession contract was published for public comment almost six weeks in advance of the deadline for submitting public comments on the proposed regulations. Commenters had ample time to review the documents together.

The general concessioner organization criticized the preamble to the proposed regulations with respect to the fact that it concludes that the proposed regulations do not have takings implications within the meaning of Executive Order No. 12630. NPS has reviewed the position of the general concessioner organization in consultation with the Office of the Solicitor. The NPS and the Office of the Solicitor are of the view that the final rule does not have any takings implications as discussed further below.

Several comments stated that the question and answer format of the regulations is confusing. NPS disagrees. It considers that the question and answer format provides an effective means for readers to locate a particular section of the regulations and to understand its relationship to the other sections.

In addition to the changes made to the proposed regulations in the final rule, NPS has made a number of editorial and conforming changes, including, without limit, changing the introductory questions at the beginning of each

section to reflect changed content of the section.

#### **Drafting Information**

The primary officials that authored this rule are Wendelin M. Mann, Concession Program, National Park Service, and Pamela L. Barkin, Office of the Solicitor, Department of the Interior.

#### **Compliance With Laws, Executive Orders and Departmental Policy**

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

This rule is a significant rule under Section 3(f)(4) of Executive Order 12866 and accordingly has been reviewed by the Office of Management and Budget.

##### **Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more. In fact, NPS does not consider that the rule will have any measurable effect on the economy. The rule merely establishes the procedures for award of NPS concession contracts and the terms and conditions of NPS concession contracts. This rule will not result in increased costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions as the rule does not change the manner in which a concessioner's rates and charges to the public are established. Further, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. To the contrary, the rule enhances competition in the award of concession contracts. The primary effect of the proposed rule is to establish procedures for the solicitation, award and administration of National Park Service concession contracts required by the 1998 Act.

##### **Regulatory Flexibility Act**

The purpose of this rule is to describe procedures and terms for the solicitation, award and administration of NPS concession contracts in accordance with the 1998 Act. As such, it is not a rule that is required to be published as proposed for public comment by 5 U.S.C. 553 or other law. 5 U.S.C. 553 exempts from its application regulations that involve a "matter relating to agency management or personnel or to public property, loans, grants, benefits and contracts." The NPS regulations address NPS

concession contracts and public property (park areas). In addition, although Section 417 of the 1998 Act requires NPS to promulgate regulations for its implementation, it does not require that this be done through a general notice of proposed rulemaking. Accordingly, NPS does not consider that this regulation is subject to the Regulatory Flexibility Act as that Act, by its terms, only applies to rules and regulations that are required by 5 U.S.C. 553 or other laws to be promulgated after required publication of a general notice of proposed rulemaking.

On November 22, 1999, however, NPS published in the **Federal Register** a discussion of the proposed regulations that meet the spirit of the Regulatory Flexibility Act in the form of an initial regulatory flexibility analysis. The notice also asked for public comments on the suggestion of NPS that the Regulatory Flexibility Act may not apply to these regulations.

Only two comments were received in response to the notice, both from law firms representing incumbent concessioners. Both comments summarily concluded that the proposed regulations are subject to the Regulatory Flexibility Act. NPS does not agree with this view but considers the matter academic as NPS has fully complied with spirit of the Regulatory Flexibility Act in promulgating these regulations.

NPS also points out that the preamble to the proposed regulations states that it is likely that the number of NPS concession contracts and permits will decrease as a result of the proposed regulations. This statement was erroneously included in the preamble after it had been determined by NPS to be incorrect. The **Federal Register** notice regarding the initial regulatory flexibility analysis stated that this statement should be disregarded.

Upon consideration of public comments on its initial analysis, NPS has concluded that the proposed regulations and final rule, even if subject to the Regulatory Flexibility Act, will not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act for the reasons discussed in the initial notice.

Nonetheless, NPS sets forth below the required elements of a final regulatory flexibility analysis in the spirit of the Regulatory Flexibility Act, as follows:

(1) A succinct statement of the need for, and objectives of the rule.

The final rule is needed to comply with Section 417 of the 1998 Act that requires promulgation of appropriate regulations for its implementation. The objectives of the rule are to provide

appropriate procedures, terms and conditions for NPS concession contracting in furtherance of the purposes of the 1998 Act.

(2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

As stated, only two comments were received in response to the initial regulatory flexibility analysis. The NPS response to the issues raised by the comments on the initial regulatory flexibility analysis (except for restated arguments regarding the preference in renewal issue) are as follows:

a. *Comment.* The environmental requirements of the proposed rule go beyond statutory requirements and impose duties that should be borne by the government.

NPS disagrees with this comment. The environmental requirements of the proposed rules, i.e., that concessioners should undertake activities in the conduct of their operations that enhance the environment (such as recycling and energy conservation) are clearly reasonable operating conditions that NPS may place on a concessioner under the terms of a concession contract. Further, NPS does not understand why the commenter suggests that these type of programs should be borne by the government. NPS considers that concessioners should be responsible for conserving energy in its operations and recycling trash. Finally, the suggestion that a small business (defined by SBA as a business grossing less than \$5 million dollars) cannot afford to undertake progressive environmental management practices such as recycling and energy conservation is not supported by practical experience. Not only are such practices commonplace in the United States, many of them are cost effective. In any event, NPS has modified the environmental requirements in the final rule as discussed above.

b. *Comment.* The restrictions on assignments and sales take the proposed regulations well beyond the statute.

NPS does not consider that the proposed regulations regarding sales and transfers exceeded reasonable implementation of the requirements of Section 408 of the 1998 Act. Section 408 did not exempt small businesses from its application. The information requirements set forth in the proposed regulations are necessary for NPS to carry out its responsibilities under Section 408. In any event, in the final

rule NPS has made the information requirements discretionary in the circumstances of particular transactions. The smaller the business, the less information NPS will generally need in order to approve a sale or transfer. In addition, the final rule has eliminated reference to approval of encumbrances of net revenue as mentioned by the commenter as particularly burdensome to small businesses.

c. *Comment.* The section of the proposed rule that states that a purchaser of a concession does not have to buy the related personal property of an existing concessioner could cause losses to the small business concessioner.

NPS notes that the 1998 Act makes no mention of a requirement that an existing concessioner is entitled to have a new concessioner purchase its personal property. It is the position of NPS that concession contracts should not require an existing concessioner to sell its personal property to a new concessioner or to require a new concessioner to purchase the personal property of a previous concessioner. Both businesses are treated equally. NPS fails to understand why a contract that permits the contractor to sell its personal property on the open market upon contract expiration is burdensome to the contractor or in any way contrary to usual business practices in the United States. In fact, requiring a new concessioner to purchase the personal property of a prior concessioner may well be considered burdensome to small businesses.

d. *Comment.* The requirement in the proposed regulations that the purchaser of a concession operation has a year to pay a prior concessioner for its leasehold surrender interest is burdensome to small businesses.

NPS has discussed the need for this provision in the section-by-section analysis. However, NPS also notes that the final rule is changed in this connection, requiring the payment of interest and only permitting payment after the expiration of a contract in extraordinary circumstances beyond the control of NPS. NPS considers that these changes address any valid concerns of the commenter.

e. *Comment.* One hundred and forty two small businesses constitute a significant number of small businesses within the meaning of the Regulatory Flexibility Act.

The commenter made this assertion without explanation. NPS does not consider that there is any valid basis upon which to conclude that 142 businesses out of all the hotel, restaurant, outfitter and guide,

sightseeing, etc. businesses in the United States are a "significant" number of small businesses within the meaning of the Regulatory Flexibility Act.

f. *Comment.* The lottery system and the lack of regulations regarding rates to the public unduly affect small businesses.

Reference to a lottery system has been eliminated in the final rule. In addition, a section on rate approvals has been added. In any event, NPS rate approvals are accomplished under administrative guidelines, not regulations.

(3) A description of and an estimate of the number of small entities to which the rule will apply.

NPS notes that the vast majority of NPS concessioners (approximately 600 out of 630) are "small businesses" under applicable Small Business Administration guidelines (gross receipts of less than \$5 million) and has developed the proposed regulations and final rule to accommodate to the extent possible the concerns of concessioners and prospective concessioners, almost all of which are small businesses.

There are some 630 existing NPS concessioners. Of these, approximately 75% will be provided a preference in renewal because of the 1998 Act. In addition, there are an unquantifiable number of businesses which may in the future seek to obtain a concession contract and thereby benefit from the 1998 Act's repeal of the preference in renewal as they will have a greater chance of successfully competing for a concession contract. The types of businesses that are generally NPS concessioners are hotel, restaurant, transportation, marina, sightseeing, outfitting, souvenir sales, etc., *i.e.*, businesses that provide necessary and appropriate visitor services in areas of the national park system.

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

All concessioners are subject to these requirements.

Sections 51.98 and 51.99 describe the records and recordkeeping requirements of the final rule. All concessioners are subject to these requirements under the 1998 Act and this part. The type of skills necessary include business, accounting, and, in limited circumstances, legal skills.

(5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated

objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternatives adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The previous discussion under the section-by-section analysis provides this information in detail, including a discussion as to why suggestions from concessioners were not adopted by NPS in the final rule. In general terms, the requirements of the final rule are necessary in order for NPS to properly carry out its responsibilities under the 1998 Act. However, NPS notes that it has made a number of incremental changes in the final rule that ameliorate impacts on smaller entities. For example, it has made the environmental management program elements of the proposed regulations discretionary with respect to businesses grossing less than \$100,000 and has provided for lower information requirements for smaller concession contract solicitations. In addition, a number of changes have been made in the final rule that ameliorate impacts on all concessioners, *e.g.*, arbitration of construction cost, payment of interest on leasehold surrender interest not paid for as of contract expiration, inclusion of additional administrative appeal rights, and more limited, non-mandatory information requirements for assignments and encumbrances of concession contracts.

#### **Unfunded Mandates Reform Act**

The National Park Service has determined (for the reasons discussed above) and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, State, tribal governments or private entities. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

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

In accordance with Executive Order 12360, the rule does not have significant takings implications. The rule has no effect on private property. Existing concessioners are entitled to payment for any real property improvements they may have upon expiration or termination of existing concession contracts in accordance with their terms. Other persons are not affected by the terms of concession contracts issued under the authority of this part unless the person chooses to enter into a concession contract.

#### **Federalism**

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no direct requirements on any governmental entity other than the National Park Service.

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

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

#### **Paperwork Reduction Act**

The PRA provides that 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 collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1024-0125 (Submission of Offers in Response to Concession Prospectuses) and 1024-0126 (Sales of Concession Operations). Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approvals. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approval. These additional information collection requirements will not be implemented until OMB approves the emergency request. NPS will publish a **Federal Register** notice when OMB has approved these requirements.

#### **National Environmental Policy Act**

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

### Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the proposed rule? What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

NPS notes that comments stated that the rule contains technical language and should be shorter. However, the 1998 Act itself is replete with technical language that must be defined in the rule. NPS also considers that the requirements of the rule are stated as clearly as possible.

### List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Part 51 is hereby revised to read as follows:

## PART 51—CONCESSION CONTRACTS

### Subpart A—Authority and Purpose

Sec.

- 51.1 What does this part cover?  
51.2 What is the policy underlying concessions contracts?

### Subpart B—General Definitions

- 51.3 How are terms defined in this part?

### Subpart C—Solicitation, Selection and Award Procedures

- 51.4 How will the Director invite the general public to apply for the award of a concession contract?  
51.5 What information will the prospectus include?  
51.6 Will a concession contract be developed for a particular potential offeror?  
51.7 How will information be provided to a potential offeror after the prospectus is issued?

- 51.8 Where will the Director publish the notice of availability of the prospectus?  
51.9 How do I get a copy of the prospectus?  
51.10 How long will I have to submit my proposal?  
51.11 May the Director amend, extend, or cancel a prospectus or solicitation?  
51.12 Are there any other additional procedures that I must follow to apply for a concession contract?  
51.13 When will the Director determine if proposals are responsive?  
51.14 What happens if no responsive proposals are submitted?  
51.15 May I clarify, amend or supplement my proposal after it is submitted?  
51.16 How will the Director evaluate proposals and select the best one?  
51.17 What are the selection factors?  
51.18 When must the Director reject a proposal?  
51.19 Must the Director award the concession contract that is set forth in the prospectus?  
51.20 Does this part limit the authority of the Director?  
51.21 When must the selected offeror execute the concession contract?  
51.22 When may the Director execute the concession contract?

### Subpart D—Non-Competitive Award of Concession Contracts

- 51.23 May the Director extend an existing concession contract without a public solicitation?  
51.24 May the Director award a temporary concession contract without a public solicitation?  
51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

### Subpart E—Right of Preference to a New Concession Contract

- 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?  
51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?  
51.28 When will the Director determine whether a concessioner is a preferred offeror?  
51.29 How will I know when a preferred offeror exists?  
51.30 What must a preferred offeror do before it may exercise a right of preference?  
51.31 What happens if a preferred offeror does not submit a responsive proposal?  
51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?  
51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?  
51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?  
51.35 What happens to a right of preference if the Director receives no responsive proposals?

### Subpart F—Determining a Preferred Offeror

- 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?  
51.37 How will the Director determine that a new concession contract is a qualified concession contract?  
51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?  
51.39 What are some examples of outfitter and guide concession contracts?  
51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?  
51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?  
51.42 Are there exceptions to this compensable interest prohibition?  
51.43 Who will make the determination that a concession contract is an outfitter and guide contract?  
51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?  
51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?  
51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?  
51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?  
51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?  
51.49 May the Director grant a right of preference except in accordance with this part?  
51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

### Subpart G—Leasehold Surrender Interest

- 51.51 What special terms must I know to understand leasehold surrender interest?  
51.52 How do I obtain a leasehold surrender interest?  
51.53 When may the Director authorize the construction of a capital improvement?  
51.54 What must a concessioner do before beginning to construct a capital improvement?  
51.55 What must a concessioner do after substantial completion of the capital improvement?  
51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?  
51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?  
51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?  
51.59 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender

- interest concession contract or may it be taken for public use?
- 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?
- 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?
- 51.62 What is the process to determine a leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?
- 51.63 When a new concessioner pays a concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?
- 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?
- 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?
- 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?
- 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

#### Subpart H—Possessory Interest

- 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?
- 51.69 What happens if there is a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?
- 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?
- 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?
- 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

#### Subpart I—Concession Contract Provisions

- 51.73 What is the term of a concession contract?
- 51.74 When may a concession contract be terminated by the Director?
- 51.75 May the Director segment or split concession contracts?
- 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

- 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?
- 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?
- 51.79 May the Director waive payment of a franchise fee or other payments?
- 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?
- 51.81 May the Director include "special account" provisions in concession contracts?
- 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?
- 51.83 Handicrafts. [Reserved]

#### Subpart J—Assignment or Encumbrance of Concession Contracts

- 51.84 What special terms must I know to understand this part?
- 51.85 What assignments require the approval of the Director?
- 51.86 What encumbrances require the approval of the Director?
- 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?
- 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?
- 51.89 What happens if there is a default on an encumbrance approved by the Director?
- 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?
- 51.91 What information may the Director require in the application?
- 51.92 What are standard proformas?
- 51.93 If the transaction includes more than one concession contract, how must required information be provided?
- 51.94 What information will the Director consider when deciding to approve a transaction?
- 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?
- 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?
- 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

#### Subpart K—Information and Access to Information

- 51.98 What records must the concessioner keep and what access does the Director have to records?
- 51.99 What access to concessioner records will the Comptroller General have?
- 51.100 When will the Director make proposals and evaluation documents publicly available?

#### Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

- 51.101 Did the 1998 Act repeal the 1965 Act?

- 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?
- 51.103 Severability.

#### Subpart M—Information Collection

- 51.104 Have information collection procedures been followed?

**Authority:** The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

#### Subpart A—Authority and Purpose

##### § 51.1 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.* and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105–391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) relating to revenue-producing visitor services.

##### § 51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with

the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

## Subpart B—General Definitions

### § 51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The *1965 Act* means Public Law 89–249, commonly known as the National Park Service Concession Policies Act of 1965.

A *1965 Act concession contract* is a concession contract or permit entered into under the authority of the 1965 Act.

The *1998 Act* means Title IV of Public Law 105–391.

The *award* of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A *concession contract (or contract)* means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions.

Concession contracts are not contracts within the meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions.

Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A *concessioner* is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

*Director* means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A *franchise fee* is the consideration paid to the Director by a concessioner

for the privileges granted by a concession contract.

*Offeror* means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

*Possessory interest* means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A *possessory interest concession contract* means a 1965 Act concession contract that provides the concessioner a possessory interest.

A *preferred offeror* is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A *qualified concession contract* is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A *qualified person* is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A *responsive proposal* means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A *right of preference* is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

*Visitor services* means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

## Subpart C—Solicitation, Selection and Award Procedures

### § 51.4 How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.

(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than

eighteen months prior to the expiration of a related existing concession contract.

**§ 51.5 What information will the prospectus include?**

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

(1) The minimum acceptable franchise fee or other forms of consideration to the Government;

(2) The minimum visitor services that the concessioner is to be authorized to provide;

(3) The minimum capital investment, if any, that the concessioner must make;

(4) The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and

(5) Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;

(b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession contract for the three most recent years;

merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and

(g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

**§ 51.6 Will a concession contract be developed for a particular potential offeror?**

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.

**§ 51.7 How will information be provided to a potential offeror after the prospectus is issued?**

Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

**§ 51.8 Where will the Director publish the notice of availability of the prospectus?**

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

**§ 51.9 How do I get a copy of the prospectus?**

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing, binding and mailing costs.

**§ 51.10 How long will I have to submit my proposal?**

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

**§ 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?**

The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or resolicited solicitation for a concession contract.

**§ 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?**

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus—a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than \$100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

**§ 51.13 When will the Director determine if proposals are responsive?**

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

**§ 51.14 What happens if no responsive proposals are submitted?**

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

**§ 51.15 May I clarify, amend or supplement my proposal after it is submitted?**

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date

unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

**§ 51.16 How will the Director evaluate proposals and select the best one?**

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in § 51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall

basis, best achieve the purposes of this part. Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

**§ 51.17 What are the selection factors?**

(a) The five principal selection factors are:

(1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

(2) The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

(3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

(4) The financial capability of the offeror to carry out its proposal; and

(5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

(b) The secondary selection factors are:

(1) The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than \$100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and

(2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to which a proposal calls

for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.

(c) A prospectus may include subfactors under each of the principal and secondary factors to describe specific elements of the selection factor.

**§ 51.18 When must the Director reject a proposal?**

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

**§ 51.19 Must the Director award the concession contract that is set forth in the prospectus?**

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

**§ 51.20 Does this part limit the authority of the Director?**

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.

**§ 51.21 When must the selected offeror execute the concession contract?**

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

**§ 51.22 When may the Director award the concession contract?**

Before awarding a concession contract with anticipated annual gross receipts in excess of \$5,000,000 or of more than 10 years in duration, or, pursuant to

§ 51.24(b), the Director must submit the concession contract to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

#### **Subpart D—Non-Competitive Award of Concession Contracts**

##### **§ 51.23 May the Director extend an existing concession contract without a public solicitation?**

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, *e.g.*, the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

##### **§ 51.24 May the Director award a temporary concession contract without a public solicitation?**

(a) Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate, *e.g.*, the Director may award one temporary contract with a three year term, two consecutive temporary contracts, one with a two year term and one with a one year term, or three consecutive temporary contracts with a term of one year each, to any qualified

person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may not be awarded to continue visitor services provided under an extended concession contract except as permitted by paragraph (b) of this section.

(b) Notwithstanding the last sentence of paragraph (a) of this section, the Director may award a temporary concession contract for consecutive terms not to exceed three years in the aggregate to authorize the continuing conduct of visitor services that were conducted under a concession contract that was in effect as of November 13, 1998, and that either had been extended as of that date or was due to expire by December 31, 1998, and was subsequently extended. The Director must personally approve the award of a temporary concession contract in these circumstances and may do so only if the Director determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary concession contract have been considered and found infeasible. The Director must publish a notice of his intention to award a temporary concession contract to a specified person under this paragraph and the reasons for the proposed award in the **Federal Register** at least 60 days before the temporary concession contract is awarded. In addition, the Director must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the proposed award of a temporary concession contract under this paragraph at least 60 days before the temporary concession contract is awarded. A temporary concession contract awarded under the authority of this paragraph will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract which

replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under the extended concession contract that was replaced by the temporary concession contract under paragraph (b) of this section.

##### **§ 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?**

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinant of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the **Federal Register** at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

#### **Subpart E—Right of Preference to a New Concession Contract**

##### **§ 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?**

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

##### **§ 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?**

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

**§ 51.28 When will the Director determine whether a concessioner is a preferred offeror?**

Subject to §§ 51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

**§ 51.29 How will I know when a preferred offeror exists?**

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

**§ 51.30 What must a preferred offeror do before it may exercise a right of preference?**

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

**§ 51.31 What happens if a preferred offeror does not submit a responsive proposal?**

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

**§ 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?**

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions

of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

**§ 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?**

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

**§ 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?**

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

**§ 51.35 What happens to a right of preference if the Director receives no responsive proposals?**

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

**Subpart F—Determining a Preferred Offeror**

**§ 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?**

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

- (a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;
- (b) The applicable new contract is a qualified concession contract as determined under this part; and
- (c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

**§ 51.37 How will the Director determine that a new concession contract is a qualified concession contract?**

A new concession contract is a qualified concession contract if the Director determines that:

(a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either

(b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than \$500,000 in the first 12 months of its term; or

(c) The new concession contract is an outfitter and guide concession contract as described in this part.

**§ 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?**

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

**§ 51.39 What are some examples of outfitter and guide concession contracts?**

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

**§ 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?**

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular

geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas that are inaccessible by motorized vehicle;

(d) The operations occur in areas where search and rescue support is not readily available; and

(e) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

**§ 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?**

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

**§ 51.42 Are there exceptions to this compensable interest prohibition?**

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

**§ 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?**

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

**§ 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?**

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this

determination in consideration of annual evaluations made by the Director of the concessioner's performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

**§ 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?**

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.

**§ 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?**

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner's performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such

shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period) May 17, 2000, the prospectus must be amended to delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

**§ 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?**

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30 days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the appeal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination

that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

**§ 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?**

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.

**§ 51.49 May the Director grant a right of preference except in accordance with this part?**

The Director may not grant a concessioner or any other person a right of preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

**§ 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?**

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

**Subpart G—Leasehold Surrender Interest**

**§ 51.51 What special terms must I know to understand leasehold surrender interest?**

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

*Arbitration* means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

*Capital improvement* is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

*Construction cost* of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted

Accounting Principals (GAAP). The term “construct” or “construction” as used in this part also means “install” or “installation” of fixtures where applicable.

*Consumer Price Index* means the national “Consumer Price Index—All Urban Consumers” published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

*Depreciation* means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

*Eligible direct costs* means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor’s shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor’s (and subcontractor’s) profit and overhead (including job supervision, worker’s compensation insurance and fire, liability, and unemployment insurance).

*Eligible indirect costs* means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are

eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

*Fixtures and non-removable equipment* are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term "fixture" as used in this part includes the term "non-removable equipment."

*Leasehold surrender interest solely* means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

*Leasehold surrender interest concession contract* means a concession contract that provides for leasehold surrender interest in capital improvements.

*Leasehold surrender interest value* means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

(1) The initial construction cost of the related capital improvement;

(2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

*Major rehabilitation* means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

*Pre-rehabilitation value* of an existing structure means the replacement cost of the structure less depreciation.

*Real property improvements* means real property other than land, including, but not limited to, capital improvements.

*Related capital improvement or related fixture* means a capital improvement in which a concessioner has a leasehold surrender interest.

*Replacement cost* means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

*Structure* means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

*Substantial completion of a capital improvement* means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

#### **§ 51.52 How do I obtain a leasehold surrender interest?**

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

#### **§ 51.53 When may the Director authorize the construction of a capital improvement?**

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

#### **§ 51.54 What must a concessioner do before beginning to construct a capital improvement?**

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

#### **§ 51.55 What must a concessioner do after substantial completion of the capital improvement?**

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the

concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

**§ 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?**

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under § 51.57. The Director may at any time amend a construction cost determination (subject to arbitration under § 51.57) if the Director determines that it was based on false, misleading or incomplete information.

**§ 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?**

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under § 51.56. If a timely request is not made, the Director's determination of construction cost under § 51.56 shall be the final determination of the construction cost. The arbitration procedures are described in § 51.51. The

decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

**§ 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?**

The concessioner:

(a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;

(b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and

(c) May relinquish or waive a leasehold surrender interest.

**§ 51.59 Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?**

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest within the meaning of this part and for all other purposes.

**§ 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?**

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

**§ 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?**

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

**§ 51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?**

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for arbitration as to the leasehold surrender interest values upon request of the Director or the concessioner. The arbitration procedures are described in Section 51.51. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

**§ 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?**

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under § 51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

**§ 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?**

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (*e.g.*, a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the

related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part.

**§ 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?**

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

**§ 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?**

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (*e.g.*, fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (*e.g.*, a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

**§ 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?**

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

**Subpart H—Possessory Interest**

**§ 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?**

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

**§ 51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?**

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior concessioner's possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director's written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested

by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

**§ 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?**

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner's possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

**§ 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?**

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in § 51.51.

**§ 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?**

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1965 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

**Subpart I—Concession Contract Provisions**

**§ 51.73 What is the term of a concession contract?**

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

**§ 51.74 When may a concession contract be terminated by the Director?**

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area

resources and providing necessary and appropriate visitor services in park areas.

**§ 51.75 May the Director segment or split concession contracts?**

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than \$500,000.

**§ 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?**

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a "preferential right to new or additional services" means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

**§ 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?**

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

**§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?**

(a) Concession contracts will provide for payment to the government of a

franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

**§ 51.79 May the Director waive payment of a franchise fee or other payments?**

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

**§ 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?**

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area,

the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

**§ 51.81 May the Director include "special account" provisions in concession contracts?**

(a) The Director may not include in concession contracts "special account" provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital

improvements, and, government personal property, assigned to the concessioner by a concession contract.

**§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?**

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

**§ 51.83 Handicrafts. [Reserved]**

**Subpart J—Assignment or Encumbrance of Concession Contracts**

**§ 51.84 What special terms must I know to understand this part?**

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

*A controlling interest in a concession contract* means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

*A controlling interest in a concessioner* means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A "controlling interest" in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner.

The term "controlling interest" in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

*Rights to operate and/or manage* under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

*Subconcessioner* means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

**§ 51.85 What assignments require the approval of the Director?**

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as "assignments" for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

**§ 51.86 What encumbrances require the approval of the Director?**

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as "encumbrances" for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

**§ 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?**

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

(a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the

concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

**§ 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?**

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

**§ 51.89 What happens if there is a default on an encumbrance approved by the Director?**

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

**§ 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?**

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

**§ 51.91 What information may the Director require in the application?**

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

- (a) All instruments proposed to implement the transaction;
- (b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;

(c) A narrative description of the proposed transaction;

(d) A statement as to the existence and nature of any litigation relating to the proposed transaction;

(e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;

(f) A detailed description of all financial aspects of the proposed transaction;

(g) Prospective financial statements (proformas);

(h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and

(i) Such other information as the Director may require to make the determinations required by this subpart.

#### **§ 51.92 What are standard proformas?**

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A "standard proforma" is one that:

(a) Provides projections, including revenues and expenses that are consistent with the concessioner's past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;

(b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and

(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

#### **§ 51.93 If the transaction includes more than one concession contract, how must required information be provided?**

In circumstances of an assignment or encumbrance that includes more than

one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

#### **§ 51.94 What information will the Director consider when deciding to approve a transaction?**

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

#### **§ 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?**

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

#### **§ 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?**

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

#### **§ 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?**

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate

visitor services at reasonable rates and charges.

### **Subpart K—Information and Access to Information**

#### **§ 51.98 What records must the concessioner keep and what access does the Director have to records?**

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).

#### **§ 51.99 What access to concessioner records will the Comptroller General have?**

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

#### **§ 51.100 When will the Director make proposals and evaluation documents publicly available?**

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

### Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

#### § 51.101 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

#### § 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a "renewal preference" in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals only to a

Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

#### § 51.103 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

### Subpart M—Information Collection

#### § 51.104 Have information collection procedures been followed?

(a) The Paperwork Reduction Act provides that 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 information collection for submission of proposals in response to concession prospectuses contained in

this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0125, extended through May 30, 2000. An information collection for proposed transfers of concession operations is covered by OMB Approval No. 1024-0126 effective through August 31, 2002.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(c) Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approval. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approvals. These additional information collection requirements will not be implemented until OMB approves the emergency request. The Director will publish a **Federal Register** notice when OMB has approved these requirements.

Dated: April 10, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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# Federal Register

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**Monday,  
April 17, 2000**

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**Part IV**

## **Department of Housing and Urban Development**

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**24 CFR Part 903**

**Rule To Deconcentrate Poverty and  
Promote Integration in Public Housing;  
Proposed Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 903**

[Docket No. FR-4420-P-08]

RIN 2577-AB89

**Rule To Deconcentrate Poverty and  
Promote Integration in Public Housing**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the regulatory text of the final rule on Public Housing Agency Plans, published October 21, 1999, to fully reflect the importance of deconcentration by income and affirmatively furthering fair housing in a PHA's admission policy, consistent with the directive to achieve "One America," and to provide further direction to PHAs on the implementation of deconcentration and affirmatively furthering fair housing.

HUD also proposes to make several clarifying language changes throughout the rule to make the PHA Plan regulation clearer for PHAs, their residents and members of the public. HUD sets out the entire rule for the convenience of the reader. In addition, one change would permit the Secretary to further simplify the PHA Plan submission for PHAs permitted to submit a streamlined Plan.

**DATES:** *Comments Due Date:* June 1, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rod Solomon, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708-0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that

number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Purpose of This Rule**

HUD today is issuing this proposed rule for two purposes. The first is to assure that PHAs know what they must do to deconcentrate poverty in the public housing program. The second is to assure that PHAs know what they must do to affirmatively further fair housing, as it relates to admissions to public housing.

With the issuance of this revision of the PHA Plan rule, the Administration initiates a new chapter in the history of Federal policy on subsidized housing for low and moderate income people in America. Central to this new chapter is the dream of "One America," where families are not segregated by such factors as income and race.

Focusing specifically on the income mixing and fair housing obligations of local public housing agencies, this revised rule outlines a bold commitment to meeting the critical housing needs of struggling renters and their families and to expanding opportunity through housing assistance—the original and enduring dream of America's housing policy and, by extension, of the American experiment itself. This commitment is embodied in a set of high expectations for public housing agencies. The expectations aim to significantly reduce the persistently high levels of racial segregation and poverty concentration that have too long characterized public housing in many of our Nation's communities.

Over fifty years ago, the Housing Act of 1949 articulated a national commitment to a "decent home and suitable living environment for every American family." More than a commitment, it was a *dream*—namely, that housing and community development assistance generate real opportunity for individuals and families struggling up the ladder into our Nation's economic mainstream. This dream was also part of the 1937 enactment of the Nation's first public housing program: the law envisioned public housing as a platform of opportunity for families ranging in income and background to save money on rent and thereby make their way up the economic ladder.

Sadly, the reality of housing assistance, particularly when provided through subsidized housing developments, has often fallen short of the dream. And public housing has presented unique and significant challenges in this regard. Public housing

is a form of subsidized housing development that is typically developed and managed by local public housing agencies (rather than private or nonprofit landlords), with funding from HUD.

For decades, many of the Nation's cities and towns sited public housing developments in predominantly low-income, minority neighborhoods. Discriminatory local political processes thus concentrated a large share of the locality's most affordable, subsidized rental units in geographic areas that tended to be—already—older, more dilapidated, higher in poverty, less politically powerful, and more poorly supported by public services than other areas. It was hardly the dream that our Nation's founding fathers, or the framers of Federal housing policy in the last century, envisioned. And the results of discrimination in the siting of public housing have been all too predictable: opportunity denied, racial and economic isolation perpetuated, and a mountain of civil rights litigation.

Unfortunately, the challenge is broader than where public housing developments have been sited. Over the years, compounding the frequent problem of discriminatory siting was a second local practice: discrimination in the lease-up processes that open particular public housing developments or provide Section 8 rental subsidies (vouchers) to households of particular racial and socioeconomic backgrounds. In some cases, relatively higher income families might have been directed to higher income, "better" buildings in better neighborhoods, or similar discrimination might have been practiced on the basis of racial or ethnic background. In others, local actions might not have been undertaken to counteract discriminatory siting over the years.

With the issuance of this revised rule, the Administration initiates another historic shift in the direction of housing policy and a significant strengthening of HUD's role as a promoter of opportunity and protector of civil rights. Fulfilling the aims and expectations outlined in the Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act), this revised rule specifies what local public housing agencies must do, as part of the Public Housing Agency Plans they submit to HUD in order to receive funding, to deconcentrate poverty and affirmatively further fair housing in the public housing program and to affirmatively further fair housing in the Section 8 voucher program.

No longer will an agency, whether by intent or by default, be able to

concentrate relatively low-income families in some buildings and higher income families in other buildings. Under this revised rule, a local public housing agency will meet the first requirement—deconcentration—by bringing higher income tenants into relatively lower income buildings and lower income tenants into relatively higher income buildings. This will be accomplished by classifying buildings and prospective tenants according to their income levels and then making lease-up decisions, as outlined above, that gradually improve the income mix of each building under a public housing agency's management. In order to achieve deconcentration, an agency must skip particular families on its waiting list, as necessary. In addition, an agency may apply local admission preferences created to serve special, high-need groups: homeless persons, victims of domestic violence, and families with severe rent burden (greater than fifty percent of household income).

In addition, a public housing agency must meet the revised rule's second principal requirement by preparing and carrying out its Plan in ways that protect the civil rights of families served. First, each agency must carry out its Plan in conformity with Federal civil rights laws, including provisions of the Civil Rights Act of 1964 and the Fair Housing Act of 1968. Beyond the basic requirement of nondiscrimination, however, an agency should affirmatively further fair housing to reduce racial and national origin concentrations. As this revised rule indicates, HUD will take action to challenge civil rights certifications where it appears that a PHA Plan or its implementation does not reduce racial and ethnic concentrations and is perpetuating segregation or is, worse yet, creating new segregation. If HUD offers this challenge, the onus will be on the public housing agency to establish that it is providing the full range of housing opportunities to applicants and tenants or that it is implementing affirmative efforts. Affirmative efforts may include the marketing of geographic areas in which particular demographic groups typically do not reside, additional consultation and information for applicants, and provision of additional support services and amenities to a development.

Together, the deconcentration and fair housing expectations clarified in this historic revised rule represent a new contract between the Nation's housing and urban development agency and its communities, between HUD and those who provide vital housing assistance with HUD funds. The dream of One

America, of opportunity for all across all the old divides, endures. And while much hard work lies ahead to meet the requirements of this revised rule and mount other important strategies that reduce social and economic isolation, this revised rule puts America's core rental housing assistance programs on a new path—the path of opportunity for hardworking families all across the land, regardless of income or background.

## II. Scope of Comments

Although HUD is issuing the entire PHA Plan rule so that the reader can see the amended deconcentration and nondiscrimination provisions in the context of the entire PHA Plan rule, HUD is only seeking comment on the proposed changes (notably, the provisions of Subpart A), and will only address these comments at the final rule stage. In particular, the Department is interested in receiving comment on the principal approach presented in § 903.2 of the rule text, and on the alternative approach presented in Section III of this preamble.

## III. Consideration of Approaches

When the Department decided on a specific approach to assure that poverty would be deconcentrated in public housing as a result of this rule, it considered various approaches, two of which are described below.

The approach included in this Proposed Rule is basically to require that PHAs determine an overall average income for tenants in their family developments; characterize each building as higher income or lower income, based on whether the average income in the building is above or below the overall average; and require that lower income families be admitted to higher income buildings and higher income families be admitted to lower income buildings. This method for implementing the deconcentration policy would be easy to understand and have the widest possible impact.

Another approach that was considered, but is not included in the Proposed Rule, is to require consideration of the income of a family relative to the average income of a building only when the average income in a building is a certain percentage below or above the overall average; and then to allow the admission of families with incomes below the overall average only to those buildings in the middle range or above, and to allow the admission of families with incomes above the overall average only to those buildings with incomes in the middle range or below. Although this approach

involves less administrative complexity, it also would have less impact on deconcentration.

The Department solicits comments on the changes in the entire rule but especially regarding the following:

1. To the extent that your comments express concern that this rule affects the fulfillment of statutory and policy goals other than income deconcentration, what alternative mechanisms do you suggest that still accomplish deconcentration?

2. To the extent that your comments address administrative complexity, please include alternative suggestions that achieve deconcentration.

## IV. Justification for Shortened Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 45 days for this proposed rule. Through the PHA Annual Plans submitted to date, HUD has determined that there is in urgent need to provide PHAs with more specific direction on how to implement deconcentration policies in public housing and how to comply with requirements for nondiscrimination and affirmatively furthering fair housing in public housing admissions. The October 21, 1999 final rule provided that PHAs could determine a PHA-wide average income in family developments and categorize applicant families and public housing buildings as higher or lower income based on that average. The October 21, 1999 final rule did not make clear, however, what action PHAs must take with respect to these higher and lower income applicants relative to the higher or lower income buildings. Additionally, the rule did not specify various other critical matters regarding deconcentration requirements. The rule also did not specify how the requirement to affirmatively further fair housing would be applied in the context of admission to public housing. The first PHA Annual Plans that have been submitted to HUD generally reflect these shortcomings. HUD, therefore, needs to issue a second final rule as quickly as possible, so that PHAs that have not yet submitted their Plans can submit deconcentration plans and related fair housing admissions policies that meet the statutory requirements and accomplish the statutory goals.

## V. Findings and Certifications

### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This proposed rule amends the final rule published on October 21, 1999, to make clarification and plain language changes made to the earlier final rule. This proposed rule does not alter the Regulatory Flexibility finding made in the October 21, 1999 final rule.

### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

### *Environmental Impact*

The Finding of No Significant Impact with respect to the environment was prepared during the interim rulemaking stage of this rule, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this proposed rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

### *Regulatory Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule after its submission to OMB are identified in the docket file, which is available for public inspection in the

office of the Department's Office of General Counsel, Regulations Division, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.850 and 14.855.

### List of Subjects in 24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements

For the reasons stated in the preamble, HUD proposes to revise part 903 of title 24 of the Code of Federal Regulations to read as follows:

## **PART 903—PUBLIC HOUSING AGENCY PLANS**

### **Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions**

Sec.

903.1 What is the purpose of this subpart?

903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

### **Subpart B—PHA Plans**

903.3 What is the purpose of this subpart?

903.4 What are the public housing agency plans?

903.5 When must a PHA submit the plans to HUD?

903.6 What information must a PHA provide in the 5-Year Plan?

903.7 What information must a PHA provide in the Annual Plan?

903.9 May HUD request additional information in the Annual Plan of a troubled PHA?

903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?

903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?

903.17 What is the process for obtaining public comment on the plans?

903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?

903.21 May the PHA amend or modify a plan?

903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

903.25 How does HUD ensure PHA compliance with its plans?

**Authority:** 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

## **Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions**

### **§ 903.1 What is the purpose of this subpart?**

The purpose of this subpart is to specify what a Public Housing Agency must do in order to reduce the concentration of lower income and higher income public housing tenants in particular buildings or developments and to affirmatively further fair housing.

### **§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?**

(a) *Deconcentration of poverty and income mixing.* The PHA's admission policy with respect to deconcentration of poverty and income mixing implements section 16(a)(3)(B) of the 1937 Act (42 U.S.C. 1437n), which applies to the PHA's public housing program. Deconcentration is achieved by bringing higher income tenants into lower income developments and lower income tenants into higher income developments. The provisions of this section apply to applicants to and residents seeking voluntary transfers within public housing developments, except for those approved for demolition or for conversion to tenant-based assistance.

(1) *General.* To implement this requirement, the PHA must admit lower income families to higher income buildings (or developments) and admit higher income families to lower income buildings (or developments), using the following steps:

(i) *Step 1.* Annually determine the average income of all families residing in all of its general occupancy developments (including families residing in developments approved for demolition or conversion to tenant-based assistance and families residing in public housing units in mixed-finance developments).

(ii) *Step 2.* Annually determine the average income of all families residing in each building of each general occupancy development.

(iii) *Step 3.* Determine which general occupancy development buildings have an average income higher than the PHA average for general occupancy developments—designated "higher income buildings"—and which have an

average income lower than the PHA average for general occupancy developments—designated “lower income buildings”.

(iv) *Step 4.* Determine which families on the waiting list have incomes higher than the PHA-wide average income for general occupancy developments—designated “higher income families” for this purpose—and which have incomes lower than the PHA-wide average for general occupancy developments—designated “lower income families” for this purpose.

(v) *Step 5.* When a unit becomes available for occupancy in a higher income building, the PHA must skip families on the waiting list if necessary to reach a lower income family to whom it will offer the unit. When a unit becomes available for occupancy in a lower income building, the PHA must skip families on the waiting list if necessary to reach a higher income family to whom it will offer the unit. Skipping is required, as necessary, with respect to both site-based and community-wide waiting lists, and it must be uniformly applied. If the waiting list does not contain a family in the income category to whom the unit is to be offered, the PHA may offer a unit to a family in the other income category.

(2) *Applicability of local preferences.* In determining which higher income or lower income families to admit to a lower income or a higher income building, the PHA must use its waiting list. The PHA may use local admission preferences, except if using them would result either in offering a unit in a higher income building to a higher income family or in offering a unit in a lower income building to a lower income family. However, if a PHA has a preference for homeless persons, for families paying more than 50 percent of their income in rent, or for families who are victims of domestic violence, it may use such a preference when determining which family to admit to any building, and may admit a family with such a preference instead of a family that otherwise would be offered the unit. PHA local admission preference policies must affirmatively further fair housing.

(3) *Definition of “building”.* For purposes of applying this deconcentration policy, a “building” is one or more contiguous structures containing at least 8 public housing dwelling units.

(4) *Scattered site and small developments.* If a development contains no structures that qualify as a building, the deconcentration requirement is applied to the entire

development as if the development were a building.

(5) *Mixed-finance developments and units newly added to a PHA’s public housing stock.* For mixed-finance developments, including HOPE VI projects that are mixed finance developments, and for units newly added to a PHA’s public housing stock, the requirement to deconcentrate is applicable as follows:

(i) For the initial lease-up of vacant public housing units in mixed finance developments or for units newly added to a PHA’s public housing stock (subject to the possible right of return by prior residents), the average income for the public housing units in each building shall not exceed the PHA’s average income for general occupancy public housing developments;

(ii) After the initial lease-up of vacant units in mixed finance developments and units newly added to a PHA’s public housing stock, the leasing of public housing units is covered by the deconcentration requirements of paragraph (a)(1) through (4) of this section unless the building which contains these units is classified (based on the incomes of families residing in public housing units) as a lower income building.

(6) *Right of return.* If a PHA has provided that a family that resided in public housing on the site of a mixed-finance or other development has a right to admission to a public housing unit in that development after revitalization, this deconcentration policy does not preclude fulfilling that commitment.

(7) *Family’s discretion to refuse a unit.* A family has the sole discretion whether to accept an offer of a unit made under this deconcentration policy. The PHA may not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under this deconcentration policy. The PHA may uniformly limit the number of offers received by applicants.

(8) *Relationship to income targeting requirement.* Nothing in this deconcentration policy relieves a PHA of the obligation to meet the requirement to admit annually at least 40 percent families whose incomes are below 30 percent of area median income as provided by section 16(a)(2) of the 1937 Act, 42 U.S.C. 1437n(a)(2).

(b) *Fair housing requirements.* All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and regulations for affirmatively further fair housing. The PHA may not require any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* A PHA must carry out its Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964 and the Fair Housing Act. A PHA cannot assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations (§ 1.4(b)(1)(ii) of this title).

(2) *Affirmatively Furthering Fair Housing.* PHA policies that govern eligibility, selection and admissions under its Plan should be designed to reduce racial and national origin concentrations. Any affirmative actions or incentives a PHA plans to take must be stated in the admission policy.

(i) HUD regulations provide that PHAs should take affirmative action to overcome the effects of conditions which resulted in limiting participation of persons because of their race, national origin or other prohibited basis (§ 1.4(b)(1)(iii) and (6)(ii) of this title).

(ii) Such affirmative action may include but is not limited to, appropriate affirmative marketing efforts; additional applicant consultation and information; and provision of additional supportive services and amenities to a development.

(3) *Validity of certification.* (i) HUD will take action to challenge the PHA’s certification under § 903.7(o) where it appears that a PHA Plan or its implementation:

(A) Does not reduce racial and national origin concentration in developments or buildings and is perpetuating segregated housing; or

(B) Is creating new segregation in housing.

(ii) If HUD challenges the validity of a PHA’s certification, the PHA must establish that it is providing a full range of housing opportunities to applicants and tenants or that it is implementing actions described in paragraph (b)(2)(ii) of this section.

(c) *Relationship between poverty deconcentration and fair housing.* The requirements for poverty deconcentration, in paragraph (a) of this section, and for fair housing, in paragraph (b) of this section, arise under separate statutory authorities and are independent.

## Subpart B—PHA Plans

### § 903.3 What is the purpose of this subpart?

(a) This subpart specifies the requirements for PHA plans, required by

section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c-1).

(b) The purpose of the plans is to provide a framework for:

- (1) Local accountability; and
- (2) An easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

**§ 903.4 What are the public housing agency plans?**

(a) *Types of plans.* There are two public housing agency plans. They are:

(1) The 5-Year Plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every five PHA fiscal years. The 5-Year Plan covers the five PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD; and

(2) The Annual Plan (Annual Plan) that the PHA must submit to HUD for each fiscal year immediately following the date on which the Annual Plan is due to HUD and for which the PHA receives:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(b) *Format.* HUD may prescribe the format of submission (including electronic format submission) of the plans. HUD also may prescribe the format of attachments to the plans and documents related to the plan that the PHA does not submit but may be required to make available locally. PHAs will receive appropriate notice of any prescribed format.

(c) *Applicability.* The requirements of this subpart only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(d) *Authority for waivers.* In addition to the waiver authority provided in § 5.110 of this title, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary determines that such waiver is necessary for the effective implementation of this part.

(e) *1937 Act.* References to the "1937 Act" in this part refer to the U.S.

Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

**§ 903.5 When must a PHA submit the plans to HUD?**

(a) *5-Year Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on [date of publication of final rule in the **Federal Register**], is the PHA fiscal year that begins October, 2000. This 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning October 1, 2000.

(2) For all PHAs, the first 5-Year Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year.

(4) PHAs may choose to update their 5-Year Plans every year as good management practice and must update their 5-Year Plans that were submitted for PHA fiscal years beginning before October 1, 2000, to comply with the requirements of this part as amended on [date of publication of final rule in the **Federal Register**], at the time they submit their next Annual Plan. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan in accordance with § 903.7(r).)

(b) *The Annual Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on [date of publication of final rule in the **Federal Register**], is the PHA fiscal year that begins October 1, 2000.

(2) For all PHAs, the first Annual Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due no later than 75 days before the commencement of their fiscal year.

**§ 903.6 What information must a PHA provide in the 5-Year Plan?**

(a) A PHA must include in its 5-Year Plan a statement of:

(1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and

objectives, the PHA must adopt quantifiable goals and objectives for serving those needs wherever possible.

(b) After submitting its first 5-Year Plan, a PHA in its succeeding 5-Year Plans, must address:

(1) The PHA's mission, goals and objectives for the next 5 years; and

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan.

**§ 903.7 What information must a PHA provide in the Annual Plan?**

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information, described in this section that must be part of the first Annual Plan submission, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan includes the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families and families with disabilities;

(iii) Households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) of this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data.

(i) The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units and location.

(ii) The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and the PHA's reasons for choosing its strategy.

(b) *A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies that govern resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act, as well as any unit assignment policies for public housing. This statement must include the following information:

(1) *Deconcentration Policy.* The PHA's deconcentration policy applicable to public housing, as described in § 903.2(a).

(2) *Waiting List Procedures.* The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing developments. The statement must address any site-based waiting lists, as authorized by section 6(s) of the 1937 Act (42 U.S.C. 1437d(s)), for public housing. Section 6(s) of the 1937 Act permits PHAs to establish a system of site-based waiting lists for public housing that is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be

inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity;

(v) The PHA provides for review of its site-based waiting list policy to determine if the policy is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit) or is otherwise satisfactory to HUD;

(B) At least every three years the PHA uses independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD;

(C) Taking any steps necessary to remedy the problems surfaced during the review; and (D) Taking the steps necessary to affirmatively further fair housing.

(3) *Other admissions policies.* The PHA's admission policies that include any other PHA policies that govern eligibility, selection and admissions for the public housing (see part 960 of this title) and tenant-based assistance programs (see part 982, subpart E of this title). (The information requested on site-based waiting lists and deconcentration is applicable only to public housing.)

(c) *A statement of financial resources.* This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that govern rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) *A statement of the PHA's operation and management.* (1) This statement must list the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA.

(2) The policies listed in this statement must include a description of any measures necessary for the prevention or eradication of pest infestation. Pest infestation includes cockroach infestation.

(3) This statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(4) The information requested on a PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information requested on PHA program management and listing of administered programs applies to public housing and tenant-based assistance.

(f) *A statement of the PHA grievance procedures.* This statement describes the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants. These procedures include public housing grievance procedures and tenant-based assistance informal review procedures for applicants and hearing procedures for participants.

(g) *A statement of capital improvements needed.* With respect to public housing only, this statement describes the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken in the year in question and their estimated costs, and any other information required for participation in the Capital Fund. PHAs also are required to include 5-Year Plans covering large capital items.

(h) *A statement of any demolition and/or disposition.* (1) *Plan for Demolition/Disposition.* With respect to public housing only, a description of any public housing development, or portion of a public housing development, owned by the PHA for

which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(2) *Interim Plan for Demolition/Disposition.* (i) Before submission of the first Annual Plan, a PHA may submit an interim PHA Annual Plan solely for demolition/disposition. The interim plan must provide:

(A) The required description of the action to be taken;

(B) A certification of consistency with the Consolidated Plan;

(C) A description of how the plan is consistent with the Consolidated Plan;

(D) A relocation plan that includes the availability of units in the area and adequate funding; and

(E) Confirmation that a public hearing was held on the proposed action and that the resident advisory board was consulted.

(ii) Interim plans for demolition/disposition are subject to PHA Plan procedural requirements in this part (see §§ 903.13, 903.15, 903.17, 903.19, 903.21, 903.23, 903.25), with the following exception. If a resident advisory board has not yet been formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted.

(iii) The actual application for demolition or disposition may be submitted at the same time as submission of the interim plan or at a later date.

(i) *A statement of the public housing developments designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.*

(1) With respect to public housing only, this statement identifies any public housing developments owned, assisted, or operated by the PHA, or any portion of these developments, that:

(i) The PHA has designated for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities; and

(ii) The PHA will apply for designation for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities as provided by section 7 of the 1937 Act (42 U.S.C. 1437e).

(2) The designated housing application and approval process is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(j) *A statement of the conversion of public housing to tenant-based assistance.*

(1) This statement describes:

(i) Any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z-5);

(ii) The status of any building or buildings that the PHA may be required to convert to tenant-based assistance under section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 14371 note); or

(iii) The PHA's plans to voluntarily convert under section 22 of the 1937 Act (42 U.S.C. 1437t).

(2) The statement also must include an analysis of the developments or buildings required to be converted under section 33.

(3) For both voluntary and required conversions, the statement must include the amount of assistance received commencing in Federal Fiscal Year 1999 to be used for rental assistance or other housing assistance in connection with such conversion.

(4) The application and approval processes for required or voluntary conversions are separate approval processes. Approval of the PHA Plan does not constitute approval of these activities.

(5) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) *A statement of homeownership programs administered by the PHA.*

(1) This statement describes:

(i) Any homeownership programs administered by the PHA under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y));

(ii) Any homeownership programs administered by the PHA under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h));

(iii) An approved HOPE I program (42 U.S.C. 1437aaa); or

(iv) Any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z-4).

(2) The application and approval process for homeownership under the programs described in paragraph (k) of this section, with the exception of the section 8(y) homeownership program, are separate processes. Approval of the PHA Plan does not constitute approval of these activities.

(l) *A statement of the PHA's community service and self-sufficiency programs.* (1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12 (c) and (d) of the 1937 Act (42 U.S.C. 1437j (c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (l) of this section is applicable to both public housing and tenant-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) *A statement of the PHA's safety and crime prevention measures.*

(1) With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments. The plan also must provide, on a development-by-development or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(2) The statement regarding the PHA's safety and crime prevention plan must include the following information:

(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA; and

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities.

(3) If the PHA expects to receive drug elimination program grant funds, the PHA must submit, in addition to the information required by paragraph (m)(1) of this section, the plan required by HUD's Public Housing Drug Elimination Program regulations (see part 761 of this title).

(4) If HUD determines at any time that the security needs of a public housing development are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(n) *A statement of the PHA's policies and rules regarding ownership of pets in public housing.* This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing. The policies must be in accordance with section 31 of the 1937 Act (42 U.S.C. 1437a-3).

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601-19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). The PHA also must certify that it will affirmatively further fair housing.

(2) The certification is applicable to both the 5-Year Plan and the Annual Plan.

(3) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.2(b) and:

(i) Examines its programs or proposed programs;

(ii) Identifies any impediments to fair housing choice within those programs;

(iii) Addresses those impediments in a reasonable fashion in view of the resources available;

(iv) Works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and

(v) Maintains records reflecting these analyses and actions.

(p) *Recent results of PHA's fiscal year audit.* This statement provides the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the 1937 Act (42 U.S.C. 1437c(h)).

(q) *A statement of asset management.* To the extent not covered by other components of the PHA Annual Plan, this statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) *Additional information to be provided.* (1) For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan;

(2) A PHA must identify the basic criteria the PHA will use for determining:

(i) A substantial deviation from its 5-Year Plan; and

(ii) A significant amendment or modification to its 5-Year Plan and Annual Plan.

(3) A PHA must include such other information as HUD may request of PHAs, either on an individual or across-the-board basis. HUD will advise the PHA or PHAs of this additional information through advance notice.

#### **§ 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?**

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled in accordance with section 6(j)(2) of the 1937 Act (42 U.S.C. 1437d(j)(2)), the Public Housing Management Assessment Program (part 901 of this title) or the Public Housing Assessment System (part 902 of this chapter) include its operating budget. The PHA also must include or reference any applicable memorandum of agreement with HUD or any plan to improve performance, and such other material as HUD may prescribe.

#### **§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?**

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last

annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled in accordance with section 6(j)(2) of the 1937 Act; and

(3) PHAs that only administer tenant-based assistance and do not own or operate public housing.

(b) All streamlined plans must provide information on how the public may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions.

(c) A streamlined plan must include the information provided in this paragraph (c). The Secretary may reduce the information requirements of streamlined Plans further, with adequate notice.

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7 (a), (b), (c), (d), (g), (h), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act the streamlined Annual Plan must include the information required by § 903.7 (a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(3) For PHAs that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7 (a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

#### **§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?**

(a) A Resident Advisory Board refers to a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(2) The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

(b) Each PHA must establish one or more Resident Advisory Boards, as provided in paragraph (b) of this section.

(1) If a jurisdiction-wide resident council exists that complies with the tenant participation regulations in part 964 of this title, the PHA shall appoint the jurisdiction-wide resident council or the council's representatives as the Resident Advisory Board. If the PHA makes such appointment, the members of the jurisdiction-wide resident council or the council's representatives shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where such representation is required under paragraph (b)(2) of this section.

(2) If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on one or more Resident Advisory Boards. If the PHA makes such appointment, the PHA may require that the resident councils choose a limited number of representatives.

(3) Where the PHA has a tenant-based assistance program of significant size (where tenant-based assistance is 20% or more of assisted households), the PHA shall assure that the Resident Advisory Board (or Boards) has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation.

(4) Where or to the extent that resident councils that comply with the tenant participation regulations do not exist, the PHA shall appoint Resident Advisory Boards or Board members as needed to adequately reflect and represent the interests of residents of such developments; provided that the

PHA shall provide reasonable notice to such residents and urge that they form resident councils with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in § 903.21 of this title.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

#### **§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?**

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located. The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice.

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

(2) For State agencies that are PHAs, the applicable Consolidated Plan is the State Consolidated Plan.

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Consolidated Plan process, by the State or local officials, as applicable.

#### **§ 903.17 What is the process for obtaining public comment on the plans?**

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s), the required attachments and documents related to the plans, and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

#### **§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?**

A PHA may adopt its 5-Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

(a) The PHA has conducted the public hearing;

(b) The PHA has considered all public comments received on the plan;

(c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

#### **§ 903.21 May the PHA amend or modify a plan?**

(a) A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, as defined in § 903.7(r)(2), the PHA:

(1) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and

(2) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in § 903.23.

(b) Each significant amendment or modification to a plan submitted to HUD is subject to the requirements of §§ 903.13, 903.15, and 903.17.

#### **§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?**

(a) *Review of the plan.* When the PHA submits its Annual Plan to HUD, including any significant amendment or

modification to the plan, HUD reviews the plan to determine whether:

- (1) The plan provides all the information that is required to be included in the plan;
  - (2) The plan is consistent with the information and data available to HUD;
  - (3) The plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and
  - (4) The plan is not prohibited or inconsistent with the 1937 Act or any other applicable Federal law.
- (b) *Disapproval of the plan.* (1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any significant amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any significant amendment or modification to the plan:
- (i) Does not provide all the information that is required to be included in the plan;
  - (ii) Is not consistent with the information and data available to HUD;
  - (iii) Is not consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; or
  - (iv) Is not consistent with applicable Federal laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD will issue written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that were submitted, and to be reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(4) The provisions of paragraph (b)(3) of this section do not apply to troubled PHAs. The plan of a troubled PHA must be approved or disapproved by HUD through written notice.

(c) *Designation of due date as submission date for first plan submissions.* For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual

Plans submitted by a PHA will be considered to have been submitted no earlier than the due date as provided in § 903.5.

(d) *Public availability of the approved plan.* Once a PHA's plan has been approved, a PHA must make the approved plan and the required attachments and documents related to the plan, available for review and inspection, at the principal office of the PHA during normal business hours.

**§ 903.25 How does HUD ensure PHA compliance with its plan?**

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

Dated: March 28, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00-9334 Filed 4-14-00; 8:45 am]

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# Federal Register

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**Monday**  
**April 17, 2000**

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**Part V**

## **Department of Education**

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**34 CFR Part 75**  
**Direct Grant Programs; Proposed Rule**

**DEPARTMENT OF EDUCATION****34 CFR Part 75**

RIN 1880-AA02

**Direct Grant Programs**

**AGENCY:** Office of the Chief Financial Officer, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These proposed amendments would implement new options for the Department of Education's (Department's) application review process for discretionary grants. These changes are intended to improve the quality of the review process, provide additional flexibility, and provide greater opportunities for inexperienced, "novice applicants" to receive funding.

**DATES:** We must receive your comments on or before June 1, 2000.

**ADDRESSES:** Address all comments about these proposed regulations to Valerie A. Sinkovits, U.S. Department of Education, 400 Maryland Avenue SW., room 3652, ROB-3, Washington, DC 20202-4248. If you prefer to send your comments through the Internet use the following address: comments@ed.gov

You must include the term "Redesign" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Valerie Sinkovits. Telephone: (202) 708-7568. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:****I. Invitation to Comment**

We invite you to submit comments and recommendations regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866

and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs affected by these regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3652, Regional Office Building 3, Seventh and D Streets, S.W., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

**II. Background of the Department's Redesign of the Discretionary Grants Process**

The Secretary takes this action to implement several recommendations made by a Department discretionary grants reengineering team (team). In January of 1995, the Department's Reinvention Coordinating Council (RCC), chaired by the Deputy Secretary of Education, chartered a team of Department staff to redesign the discretionary grants process, including the application review process, to increase customer satisfaction and to ensure the best use of the Department's resources. The team was comprised of staff members from across the Department who had a wealth of knowledge of, and experience with, the Department's discretionary grants process and programs. Current and former Department grant recipients, as well as unsuccessful applicants, provided helpful comments, suggestions, and recommendations to the team for improving the discretionary grants process. The team received input from a variety of organizations, including institutions of higher education, State educational agencies, local educational agencies, and nonprofit organizations. In addition,

numerous Department staff who are involved in all phases of the discretionary grants process, from appropriations through grant close-out, provided input and recommendations on ways to improve the grants process. Furthermore, the team researched the discretionary grants processes of other Federal agencies, including the National Science Foundation and the National Institutes of Health.

The team presented its preliminary design for the new discretionary grants process in May of 1995 at a design review conference for Department staff and customers. Based on participant recommendations and comments, the team made changes and refinements to the design. In December of 1995, the final design was approved for implementation by the Department's Executive Management Committee. Pilot tests of various aspects of the new process were conducted during fiscal year 1996 by several departmental program offices, and additional refinements were made based on the results of an external evaluation. The Department began to implement the approved redesigned discretionary grants process on October 1, 1996. Some of the most noticeable changes implemented since 1996 include: eliminating the Department's centralized grants office and forming discretionary grant teams in the Department's program offices that provide "one-stop shopping" for both grants administration and programmatic information; eliminating unnecessary and time-consuming processes such as grant negotiations prior to award; and establishing partnerships with Department grantees to ensure successful project outcomes.

**III. The Team's Findings**

Although the team gathered data on all phases of the Department's discretionary grants process, the majority of comments and suggestions from customers and staff alike focused on the review of grant applications—a crucial activity that plays a major role in determining which applicants will be funded.

**A. Review Procedures**

The team's analysis of the Department's current application review process showed that the same basic review procedures are generally used for all program competitions, regardless of the number of applications received, the average amount of the awards, or the nature of the program. Both staff and customers questioned whether it was cost-effective and efficient for the Department to employ the same review

procedures for the smallest grants as it does for the largest, most complex grants.

Perhaps more importantly, they questioned whether using the same standard review procedures for each of the Department's highly diverse programs would ultimately result in the selection of the best projects that would meet unique program goals.

The team determined that the two most common elements of the Department's application review process are: (1) using numerical scores to rate applications and (2) using primarily "outside reviewers" to review applications; that is, experts who are not employees of the Federal Government.

#### 1. Numerical Scores

Under current practice, the Department establishes the maximum numerical score that an application may receive under a set of selection criteria for a competition. The Department then selects panels of reviewers to rate the applications under these selection criteria. Each member of a peer review panel rates applications by assigning numerical scores under the selection criteria. The scores of individual panel members are typically averaged together or, in some cases, added together by Department staff to produce a panel score for each application. Based on the panel scores, Department staff prepare rank order lists of the applications to assist in making funding determinations.

Some departmental program offices also use a statistical standardization process that adjusts the scores of each reviewer to eliminate biases that result from the scoring preferences of certain reviewers. For example, some reviewers may consistently score all assigned applications higher or lower than other reviewers.

Because often there are so many highly qualified applications that score very close together, the Department may need to calculate scores to one-tenth or even one one-hundredth of a point to determine the rank order. For example, due to limited program funds, the Department might be able to fund an application scoring 97.2. However, an application scoring 97.1, only one-tenth of a point less, may not be funded.

#### 2. Peer Reviewers

Both Department staff and customers placed great importance on the qualifications of the peer reviewers. Customers indicated that they expected a review process that assured a fair and high quality application review by trained reviewers with appropriate backgrounds and subject matter expertise.

Department staff stressed the importance of using high-quality reviewers, but also indicated significant challenges in engaging "outside" reviewers. Often, qualified, prospective reviewers have numerous professional commitments that preclude their participation in the Department's review process. Further, for certain program specialty areas, the pool of qualified experts to draw from is limited and the experts' time and services are in high demand.

#### B. Inexperienced Applicants

Many unsuccessful applicants, as well as grantees who had received a grant only after submitting numerous unsuccessful applications, expressed frustrations and concerns about the difficulty that inexperienced applicants have in obtaining Department discretionary grant funding. These customers felt that there was not always a "level playing field" among applicants competing for grants. They noted several factors inhibiting success, including the lack of organizational resources to hire professional grant writers with a proven track record for producing winning proposals, and the lack of resources to establish institutional grant or sponsored research offices with the mission of securing grant funding.

#### C. Building Better Projects

Although the primary goal of the application review process is to identify high quality projects that are worthy of funding, customers indicated that they expected additional benefits from the Department's review process. Numerous customers stated that thoughtful, substantive reviewers' comments identifying the strengths and weaknesses of the proposed project were critical to both the successful applicant and the unsuccessful applicant.

Successful applicants felt that receiving substantive reviewers' comments prior to the start of their grant was an especially timely and helpful tool for improving an already high-quality project. Unsuccessful applicants felt that reviewers' comments identifying weaknesses in their proposed project and suggestions for improvement would help them strengthen their proposals for the next competition. Both successful and unsuccessful applicants saw constructive reviewers' comments as a form of technical assistance that should be an integral part of the review process.

### IV. Goals for the Redesigned Application Review Process

In redesigning the discretionary grants process, particularly the application review process, the team had several goals:

- Given the range and diversity of the Department's discretionary grant programs, program offices should have the flexibility to employ procedures for reviewing and selecting grants that most closely meet their individual program needs and result in the selection of quality projects and the timely award of grants.

- Regardless of the application review procedures the Department uses for a particular program, the Department must ensure that, in all cases, trained and qualified reviewers, with appropriate backgrounds and expertise, conduct a high quality review.

- The entire discretionary grants process must be fair, efficient, cost-effective, and result in the issuance of grant awards when the customers need them.

### V. The Redesigned Application Review Process

The redesigned application review process increases the options available for reviewing and selecting grants so that the Department can better tailor the method used for a competition to meet the needs of the program. Program offices could continue to use current review and selection methods, but would be encouraged to examine the appropriateness of using the new methods for their competitions.

#### A. Quality Band Ratings

The redesigned application review process presents a new option for rating applications that focuses on a qualitative description of the application's merit, rather than a quantitative description (*i.e.*, numerical scores). Under the redesigned process, the Department could request that reviewers group applications of comparable merit into quality bands, rather than using numerical ratings to score and rank applications. The reviewers would place applications into one of five possible groupings or quality bands to denote distinctions in quality among the applications. Quality bands would range from highest to lowest quality (*i.e.*, "Excellent," "Very Good," "Good," "Fair" and "Unacceptable").

Under the quality band system of rating applications, all of the applications that place in a particular quality band would be considered comparable in quality, and therefore, the Department could support funding

any of the applications in a fundable quality band.

In any competition using quality bands, the Department would rely heavily on the professional judgement of the reviewers in the rating of applications. The individual reviewers would be instructed to provide strong written justifications for the quality band rating assigned to each application, and include comments that identify the strengths and weaknesses of the application. In addition to justifying the ratings that a reviewer has given to an application, constructive narrative reviewers' comments provide critical technical assistance that can help successful applicants improve and refine their projects and will help unsuccessful applicants improve the quality of their proposals for the next competition. Peer reviewers would receive training by Department staff prior to the start of the review regarding how to provide constructive comments that are integral to the quality band rating system.

The Department would first fund all of the applications in the highest quality band (*i.e.*, the "Excellent" band) and then proceed to fund all of the applications in the next band (*i.e.*, the "Very Good" band), and so on, until all of the applications in the last band that merits funding have been funded. If faced with the inability to fund all of the applications in a particular quality band due to limited program funds, the Secretary would have discretion in determining which applications to fund within the band. As recommended by the team, in exercising that discretion, the Secretary might use a random selection procedure to select applications from within the band until available funds were exhausted. Because the Department could commit to funding any of the applications in that particular quality band, a random selection procedure is both a feasible and fair way of selecting among applications in a quality band.

It should be noted that the Department has experience with qualitative ratings in specific program competitions. Several Department programs, such as the Technology Innovation Challenge Grants Program and the Field-Initiated Studies Research Grant Program, have used qualitative rating systems. In reviewing the applications, reviewers provided written justifications supporting the qualitative ratings assigned to each application and comments focusing on the strengths and weaknesses of the applications.

### *B. Staff Panel Reviews*

Another application review option recommended by the team was the increased use of review panels comprised solely of highly qualified Department staff. This review option is available currently to Department programs, but is not widely used.

However, the Department believes that this kind of review process might be appropriate for programs in which the awards issued were of a relatively small size or in which a high percentage of the applications under the program would ultimately be funded. Further, in competitions involving a multiple tier review process, in which two or three review panels or tiers evaluate applications, Department staff might be used by program offices to participate in one of the initial tiers of review to help determine which applications should be forwarded to the next tier for further consideration.

The team noted the following beneficial aspects of using an internal review and evaluation process for certain program competitions: (1) A high quality review is conducted by "in-house" Department experts, with appropriate backgrounds and subject matter expertise, who are familiar with the laws, regulations, and policies affecting the program and (2) the review process is more cost-effective and efficient, as the need to conduct application reviews off-site is reduced or eliminated, and the fiscal and logistical considerations of recruiting, selecting, and engaging non-Federal readers is reduced, or, in some cases, eliminated.

### *C. Novice Applicants*

In order to address customer concerns about the difficulties that inexperienced applicants face in getting discretionary grant funding from the Department, the team recommended that, if legally permissible and consistent with the intent and purpose of the program, Department program offices could set aside funds to be awarded to novice applicants. The team suggested a streamlined application process for novice applicants, consisting of a brief application, submitted by the applicants for a smaller than average grant under the program; review and evaluation by Department staff members to establish that the applications are of sufficient quality to merit funding; use of a random selection process when the Department does not have sufficient funds to fund all of the qualified novice applications; and closer monitoring and technical assistance after award for novice grantees.

To meet individual program needs, program offices might use other review and selection procedures to assist novice applicants in obtaining funding. For example, instead of conducting a separate competition for novice applicants, a program office might hold only one competition open to all eligible applicants, including novice applicants. Under a competitive preference for a program competition using numerical scores, a novice applicant could receive a certain number of additional points based on its status as a novice. Likewise, in a program competition using quality bands, the Secretary could take into consideration the applicants' "novice" status in making funding decisions. For example, if all of the applications in a quality band could not be funded due to limited program funds, the Secretary could fund all, or a certain percentage of the novice applications in that band before funding other applications in that band.

In all cases, novice grantees would be required to follow the same regulations and requirements as other grantees under the program, and, as mentioned earlier, more stringent conditions might be imposed, if needed, on novice grantees, such as more frequent monitoring by the Department.

## **VI. Section-by-Section Analysis of the Proposed Regulations**

### *A. Section 75.105 Annual Priorities*

This section would be amended to reflect the use of annual priorities in competitions that use quality bands to evaluate applications. Under proposed paragraph (c)(2)(i)(B) of this section, when selecting applications in quality bands, the Secretary may consider the extent to which or how well the application meets the priority in selecting applications for funding.

The following hypothetical example illustrates how this would work. The Secretary publishes an application notice for a competition under the ABC School Technology Program, telling applicants that the Secretary will use quality bands to evaluate applications. The notice also states that the Secretary will give competitive preference to applications under this competition based on the extent to which or how well an application meets the following priority: significant involvement by members of the business community in the design and implementation of the project. In response to the application notice, the Secretary receives many applications under the ABC School Technology Program. The Secretary has sufficient funds to select all of the applications in the "Excellent" band,

but only has sufficient funds to select 10 of the 30 applications in the "Very Good" band. Twelve of the 30 applications in the "Very Good" band address the priority.

In deciding which 10 applications to fund, the Secretary may consider the extent to which or how well the 12 applications address the priority. The Secretary may conclude, after reviewing the applications and the peer reviewers' comments, that eight of the 12 applications extensively address the priority and provide detailed information about how the applicant would implement the priority. The Secretary would select the 8 applicants that effectively addressed the priority, before funding other applications.

The Secretary would document how the Secretary made the decision as to which of the eight applications addressed the priority effectively such that they deserved to be selected over other applications and would include that documentation in the file for each application that addressed the priority.

The four applications that did not address the priority effectively enough to be given priority selection would be treated as equal to the 18 remaining applications that did not address the priority at all. The Secretary would then select the final two applications from the remaining 22 applications. The Secretary either could use random selection, or could rely on information regarding the selection criteria or other requirements relevant to the selection of applications in making the final selection, regardless of whether the applications addressed the priority.

#### *A. Section 75.201 How the Selection Criteria Will Be Used.*

This section would be amended to state that the application package or notice published in the **Federal Register** provided to applicants includes certain information for competitions that use quality bands to evaluate applications.

#### *B. Section 75.209 Selection Criteria Based on Statutory Provisions*

This section would be amended to reflect how the Secretary would use statutory criteria, along with other criteria established by the Department, in competitions that use quality bands to evaluate applications.

#### *C. Section 75.217 How Does the Secretary Select Applications for Grants?*

Paragraph (c) of this section would be revised to reflect the use of quality bands to evaluate applications. Under proposed paragraph (d), the Secretary would continue to make the final

decision as to which applications to fund, whether the Secretary used rank ordering or quality bands. The proposed regulations would continue the Secretary's authority to determine which applications to fund after considering the information in the application, and the quality of the application, as determined under paragraph (c). Proposed paragraph (d) would also retain the provision that the Secretary could consider more information than was available to reviewers to make sure that all factors were properly weighed in the selection process. For example, a group of reviewers might rank an application very high. However, the Secretary might have information about the applicant's unsatisfactory past performance under prior Department grants (e.g., improper use of funds or failure to achieve its approved project goals and objectives). The Secretary could consider this information under paragraph (d)(1)(iii) and decide not to fund the application.

A new paragraph (e) would be added to reflect the Secretary's ability to refuse consideration of applications that do not meet a minimum cut-off score or minimum quality band rating. The Secretary would have flexibility in deciding whether the cut-off score or quality band rating should be established in the application notice for the competition or after determining the overall quality of applications submitted under a competition.

#### *D. Section 75.223 What Procedures Apply When the Secretary Uses Quality Bands to Evaluate Applications?*

A new section 75.223 would be added to describe the procedures the Secretary would use under competitions that use quality bands to evaluate applications. These proposed regulations would permit reviewers to group applications under the following five quality bands: "Excellent," "Very Good," "Good," "Fair," and "Unacceptable." Under proposed § 75.223(b), the Secretary would not fund any application placed in the "Unacceptable" band.

In cases where the Secretary selected an application for funding from the "Fair" band, the Secretary would maintain, in the grant file, changes the applicant made to the application showing how the applicant addressed those aspects of the proposed grant that were lacking. Further, the Secretary could impose additional requirements on the grant to ensure that those aspects that were lacking in the original application are implemented properly.

Under proposed paragraph (c) of this section the experts would rate the applications against the program's

selection criteria and then group applications of comparable merit into the same quality band, so that there would be no rank order within a quality band.

Proposed paragraph (d) would add a provision outlining what would happen if the Secretary grouped applications in non-numerical quality bands and there were more applications within any one quality band worthy of funding than available funds would allow. In such situations, the Secretary would use his discretion to select applications and could select randomly from within the quality band in exercising that discretion.

Proposed paragraph (d) would also address the possibility that different members of a panel might put the same application in different quality bands. In these cases, the Secretary would have to resolve the conflict, using all available information. For example, if two reviewers rated an application in the "Very Good" and one rated the application in the "Excellent" band, the Secretary might conclude that the application should be considered with the applications that were rated in the "Very Good" band, as that view predominated in the consideration of the reviewers. In other cases, the Secretary might find that one of the reviewers misunderstood portions of the application and misjudged the application. This might produce a three-reviewer split, where one member rated the application in the "Excellent" band, one member rated the application in the "Very Good" band and the third member rated the application in the "Unacceptable" band. If the Secretary determined that the third reviewer misjudged the application, the Secretary would look at the ratings of the other two reviewers to decide in which band to rate the application. This kind of judgement is similar to what happens under the current system, when the Secretary decides not to fund an application that was within the funding range because the average of the scores for an application was unjustifiably high due to a misreading of the application by one of the reviewers.

The Secretary would direct employees of the Department who act as competition managers or monitors to point out to reviewers variances in evaluations so these kinds of conflicts can be resolved in most cases during the review process. In any case, these issues would be resolved before the Secretary makes final selection decisions. In no case would a reviewer be directed to change an evaluation, only to consider whether the reviewer fully considered all of the information in the application.

The Secretary will monitor the development of the Department's use of quality bands to determine if any further regulatory clarification is needed to resolve issues that may arise from reviewers placing applications in different quality bands.

*E. Section 75.224 What Are the Procedures for Using a Multiple Tier Review Process To Evaluate Applications?*

Proposed § 75.224 would codify a practice that has evolved in some program offices of the Department involving the use of more than one review of an application. This review by more than one group of reviewers is known as "multiple tier review." A multiple tier review process might be used by a program office to gain different perspectives on an application. For example, one panel of researchers and another panel of practitioners might be asked to review the applications for a particular program competition. More commonly, a multiple tier review process is used to narrow the pool of applicants that will be considered for funding. After the first or second tiers of the review, only some of the applications are forwarded to the next tier for further consideration. Under the multiple tier review process, the Secretary could refuse to consider an application in the second or third tier of review if it did not meet a minimum score or place in a certain minimum quality band level in the previous tier's review. The Secretary could establish the minimum score or quality band either in the application notice for the competition or after considering the overall range in the quality of the applications. For example, if a large number of the applications were rated in the "Excellent" and "Very Good" bands in the first tier of the review, and funds were only available to fund a small number of the applications, the Secretary could decide to eliminate from further review any applications that rated below the "Excellent" band.

When a multiple tier review process is used as a means for narrowing the pool of applications that will be considered for funding, it would not be unusual for an application to receive a considerably different rating in the second or third tier than it did under the previous tier's review, even from the same reviewers. Although the reviewers in the second or third tier are still rating applications under the same selection criteria, the applications are now being reviewed within the context of a higher quality pool of applications, which has the potential for affecting the reviewers' rating practices. For this reason, the

Secretary does not believe that these differences in ratings indicate errors in judgement at the prior tier.

The Secretary would also have discretion under proposed paragraph (d) to refuse consideration of an application that was rejected by any one of the groups evaluating the application in the same tier. For example, in a competition for a major statistical grant, the Secretary might choose at the first tier to have applications reviewed by a panel of statisticians and another panel of educators and citizens. If the statistical panel found the statistical model of an application valid but the panel of educators and citizens found that the result of the applicant's analysis would not advance education issues, the Secretary could refuse to consider that application in the next tier of the review process.

*F. Section 75.225 What Procedures Does the Secretary Use if the Secretary Decides to Give Special Consideration to Novice Applicants?*

Proposed new section 75.225 would be added to respond to the concerns of some applicants that they could not get a grant from the Department unless they had already received a grant. Proposed section 75.225 (a) would define novice applicants as applicants that have never received a grant or a subgrant from the Department program under which they seek funding, and have not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

In cases where an applicant had participated in a group that received a grant from the Department, such as a consortium or partnership, but had not acted as the grantee (fiscal agent) under the regulations for group applications in §§ 75.127–75.129, the applicant would not be treated as having had a previous grant under that program. However, if the applicant had been the grantee for the group application, then the applicant would be treated as having had a grant under the program that made the award.

When applying for assistance under a program that would use the novice application procedures, an applicant that met the definition of "novice applicant" and wanted to receive special consideration as a novice applicant would check a box on the Department's Application for Federal Education Assistance form (ED 424) to certify that it met all novice applicant requirements for the funding program.

Under proposed paragraph (c), the Secretary would have discretion in appropriate circumstances to set up a

separate competition for novice applicants. This novice competition would not be used when the Department would be funding a highly complicated research project, or large projects that would require coordination among a group of organizations. As an example, the Department could set up a novice competition in which novice applicants compete for small "seed money" grants and are required to submit only brief applications addressing how they meet the selection criteria for the program. The information about how the novice competition would be managed would appear in the application notice for the competition.

The Secretary would also have discretion under proposed paragraph (c) to give special consideration to novice applications as part of a competition not explicitly restricted to novice applicants. If the Secretary chose this means of considering novice applications in a rank-order competition, the Secretary would give a novice application a certain number of additional points, as stated in the application notice for the competition, based on its status as a novice. Also, as mentioned earlier in this preamble, a program office using quality band ratings could give priority to novice applications by selecting a certain percentage of, or all, novice applications within a band before selecting other applications in that band.

Finally, proposed paragraph (d) would authorize the Secretary to place special conditions on a novice grantee to help ensure that it successfully completes the project. For example, to facilitate close monitoring of the grant, the novice grantee might be required to submit performance reports on a quarterly basis.

**Clarity of the Regulations**

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them

into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 75.217 *How the Secretary selects applications for new grants.*)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies, tribal governments, community-based organizations, nonprofit organizations, and institutions of higher education. The novice applicant procedures in these regulations would benefit small entities by giving them a greater opportunity to receive awards from the Department. The flexibility in these regulations would benefit all entities, including small entities, by improving customer service and increasing the quality of the application review process.

*Paperwork Reduction Act of 1995*

These proposed regulations do not contain any information collection requirements.

*Intergovernmental Review*

These proposed regulations are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. However, many of the programs that these proposed regulations would apply to are subject to Executive Order 12372 and the regulations in 34 CFR part 79.

*Assessment of Educational Impact*

The Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply.)

**List of Subjects in 34 CFR Part 75**

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: April 12, 2000.

**Richard W. Riley,**  
*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend part 75 of title 34 of the Code of Federal Regulations as follows:

**PART 75—DIRECT GRANT PROGRAMS**

1. The authority citation for Part 75 continues to read as follows:

**Authority:** 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

2. Section 75.105 is amended by revising paragraph (c)(2)(i) to read as follows:

**§ 75.105 Annual priorities.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i)(A) If the Secretary prepares a rank order of the applications, the Secretary may assign some or all bonus points to an application depending upon the extent to which or how well the application meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The application notice states the maximum number of additional points that the Secretary may award to an application depending upon the extent to which or how well the application meets the priority.

(B) If the Secretary selects applications in quality bands, the Secretary may consider the extent to which or how well the application meets the priority in selecting applications.

\* \* \* \* \*

3. Section 75.201 is revised to read as follows:

**§ 75.201 How the selection criteria will be used.**

(a) In the application package or a notice published in the **Federal Register**, the Secretary informs applicants of—

(1) The selection criteria chosen;

(2) The factors selected for considering the selection criteria, if any; and

(3) The Secretary's decision whether to prepare a rank order of applications or group applications in non-numerical quality bands. (See 34 CFR 75.217(c))

(b) If the Secretary prepares a rank order of applications, the Secretary also informs applicants of—

(1) The total possible score for all of the criteria for a competition; and

(2) The assigned weight or maximum possible score for each criterion or factor under that criterion.

(c) If the Secretary prepares a rank order of applications and no points or weights are assigned to the selection criteria and factors used for the competition, the Secretary evaluates each selection criterion equally and within each criterion, each factor equally.

(Authority: 20 U.S.C. 1221e-3 and 3474)

4. Section 75.209 is amended by revising paragraph (a)(2) to read as follows.

**§ 75.209 Selection criteria based on statutory provisions.**

(a) \* \* \*

\* \* \* \* \*

(2)(i) If the Secretary prepares a rank order of applications, assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(ii) If the Secretary groups applications in non-numerical quality bands, the Secretary considers statutory criteria with the other criteria under § 75.223(c).

\* \* \* \* \*

5. Section 75.217 is revised to read as follows:

**§ 75.217 How does the Secretary select applications for new grants?**

(a) The Secretary selects applications for new grants on the basis of the authorizing statute, the selection

criteria, and any priorities or other requirements that have been published in the **Federal Register** and apply to the selection of applications.

(b)(1) The Secretary may use experts to evaluate the applications submitted under a competition.

(2) These experts may include individuals who are not employees of the Federal Government.

(c) Based solely on the evaluation of the quality of the applications according to the selection criteria, the Secretary either—

(1) Prepares a rank order of the applications; or

(2) Groups applications into non-numerical quality bands in accordance with the procedures in § 75.223.

(d) The Secretary determines the order in which applications will be selected, after considering the following:

(1) The information in each application.

(2) The quality of the applications as determined under § 75.217(c).

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or its submission of a performance report of unacceptable quality.

(e)(1) The Secretary may refuse to consider applications that do not meet a minimum cut-off score or minimum quality band.

(2) The Secretary may establish the minimum cut-off score or quality band—

(i) In the application notice published in the **Federal Register**; or

(ii) After reviewing the applications to determine the overall range in the quality of applications received.

(Authority: 20 U.S.C. 1221e-3 and 3474)

5. New §§ 75.223, 75.224 and 74.225 are added to subpart D under the

undersigned center heading "selection procedures" to read as follows:

**§ 75.223 What procedures apply when the Secretary uses quality bands to evaluate applications?**

(a) If the Secretary uses quality bands to evaluate applications, the quality bands are—

(1) Excellent, if the application is outstanding in all respects and deserves the highest priority for support;

(2) Very good, if the application is of high quality in nearly all respects and should be supported if at all possible;

(3) Good, if the application is a quality proposal that is worthy of support;

(4) Fair, if the application is acceptable but lacking in one or more aspects and there are issues that need to be addressed before it can be considered for funding;

(5) Unacceptable, if the application has serious deficiencies and should not be funded.

(b) The Secretary does not fund any application that is placed in the Unacceptable band.

(c) The experts must assign an overall band rating for each application, after considering the quality of the application under each criterion.

(d) If there are more applications within any one quality band than can be funded with remaining funds, the Secretary decides which applications to fund based solely on the Secretary's discretion and may select randomly in exercising that discretion.

(Authority: 20 U.S.C. 1221e-3 and 3474).

**§ 75.224 What are the procedures for using a multiple tier review process to evaluate applications?**

(a) The Secretary may use a multiple tier review process to evaluate applications.

(b) The Secretary may refuse to review applications in any tier that do not meet a minimum cut-off score or minimum quality band established for the prior tier.

(c) The Secretary may establish the minimum cut-off score or quality band—

(1) In the application notice published in the **Federal Register**; or

(2) After reviewing the applications to determine the overall range in the quality of applications received.

(d) The Secretary may, in any tier—

(1) Use more than one group of experts to gain different perspectives on an application; and

(2) Refuse to consider an application if the application is rejected under paragraph (b) of this section by any one of the groups used in the prior tier.

(Authority: 20 U.S.C. 1221e-3 and 3474)

**§ 75.225 What procedures does the Secretary use if the Secretary decides to give special consideration to novice applications?**

(a) As used in this section, "Novice applicant" means an applicant for a grant from ED that—

(1) Has never received a grant or subgrant under the program from which it seeks funding; and

(2) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

(b) For the purposes of paragraph (a)(2) of this section, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

(c) If the Secretary determines that special consideration of novice applications is appropriate, the Secretary may either—

(1) Establish a separate competition for novice applicants; or

(2) Give competitive preference to novice applicants under the procedures in 34 CFR 75.105(c)(2).

(d) Before making a grant to a novice applicant, the Secretary imposes special conditions, if necessary, to ensure the grant is managed effectively and project objectives are achieved.

(Authority: 20 U.S.C. 1221e-3 and 3474)

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General Electric Co.; comments due by 4-24-00; published 2-23-00  
Hoffmann Propeller Co.; comments due by 4-24-00; published 2-23-00  
Honeywell International Inc.; comments due by 4-28-00; published 3-20-00  
McDonnell Douglas; comments due by 4-28-00; published 2-28-00  
Pratt & Whitney; comments due by 4-24-00; published 3-24-00  
Rolls-Royce plc; comments due by 4-24-00; published 3-23-00  
Saab; comments due by 4-26-00; published 3-27-00  
Jet routes; comments due by 4-25-00; published 3-8-00  
Low airspace areas; comments due by 4-24-00; published 3-14-00
- TREASURY DEPARTMENT Customs Service**  
Country of origin marking; comments due by 4-26-00; published 4-3-00

**TREASURY DEPARTMENT****Internal Revenue Service**

Employment taxes and collection of income taxes at source:

Electronically filed information returns; installation agreements due date extension; comments due by 4-26-00; published 1-27-00

## Income taxes:

Partnerships; applying section 197 to amortization of intangible property; comments due by 4-24-00; published 1-25-00

Qualified transportation fringe benefits; comments due by 4-26-00; published 1-27-00

Stock transfer rules; supplemental rules; cross

reference; comments due by 4-24-00; published 1-24-00

**TREASURY DEPARTMENT  
Thrift Supervision Office**

## Operations:

Government securities transfer and repurchase; comments due by 4-27-00; published 3-28-00

**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**

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b>	(869-038-00001-6)	5.00	<sup>5</sup> Jan. 1, 1999
<b>3 (1997 Compilation and Parts 100 and 101)</b>	(869-042-00002-1)	22.00	<sup>1</sup> Jan. 1, 2000
<b>4</b>	(869-042-00003-0)	8.50	Jan. 1, 2000
<b>5 Parts:</b>			
1-699	(869-042-00004-8)	43.00	Jan. 1, 2000
700-1199	(869-042-00005-6)	31.00	Jan. 1, 2000
1200-End, 6 (6 Reserved)	(869-042-00006-4)	48.00	Jan. 1, 2000
<b>7 Parts:</b>			
1-26	(869-042-00007-2)	28.00	Jan. 1, 2000
27-52	(869-042-00008-1)	35.00	Jan. 1, 2000
53-209	(869-042-00009-9)	22.00	Jan. 1, 2000
210-299	(869-038-00010-5)	47.00	Jan. 1, 1999
300-399	(869-042-00011-1)	29.00	Jan. 1, 2000
400-699	(869-042-00012-9)	41.00	Jan. 1, 2000
700-899	(869-038-00013-0)	32.00	Jan. 1, 1999
900-999	(869-042-00014-5)	46.00	Jan. 1, 2000
1000-1199	(869-038-00015-6)	46.00	Jan. 1, 1999
1200-1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600-1899	(869-038-00017-2)	55.00	Jan. 1, 1999
1900-1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940-1949	(869-042-00019-6)	37.00	Jan. 1, 2000
1950-1999	(869-042-00020-0)	38.00	Jan. 1, 2000
2000-End	(869-042-00021-8)	31.00	Jan. 1, 2000
<b>8</b>	(869-042-00022-6)	41.00	Jan. 1, 2000
<b>9 Parts:</b>			
1-199	(869-038-00023-7)	42.00	Jan. 1, 1999
200-End	(869-038-00024-5)	37.00	Jan. 1, 1999
<b>10 Parts:</b>			
1-50	(869-042-00025-1)	46.00	Jan. 1, 2000
51-199	(869-038-00026-1)	34.00	Jan. 1, 1999
*200-499	(869-042-00027-7)	38.00	Jan. 1, 2000
500-End	(869-038-00028-8)	43.00	Jan. 1, 1999
<b>11</b>	(869-038-00029-6)	20.00	Jan. 1, 1999
<b>12 Parts:</b>			
*1-199	(869-042-00030-7)	18.00	Jan. 1, 2000
200-219	(869-042-00031-5)	22.00	Jan. 1, 2000
220-299	(869-038-00032-6)	40.00	Jan. 1, 1999
300-499	(869-042-00033-1)	29.00	Jan. 1, 2000
500-599	(869-038-00034-2)	24.00	Jan. 1, 1999
600-End	(869-038-00035-1)	45.00	Jan. 1, 1999
<b>*13</b>	(869-042-00036-6)	35.00	Jan. 1, 2000

Title	Stock Number	Price	Revision Date
<b>14 Parts:</b>			
*1-59	(869-042-00037-4)	58.00	Jan. 1, 2000
60-139	(869-042-00038-2)	46.00	Jan. 1, 2000
140-199	(869-038-00039-3)	17.00	Jan. 1, 1999
*200-1199	(869-042-00040-4)	29.00	Jan. 1, 2000
1200-End	(869-042-00041-2)	25.00	Jan. 1, 2000
<b>15 Parts:</b>			
0-299	(869-042-00042-1)	28.00	Jan. 1, 2000
300-799	(869-038-00043-1)	36.00	Jan. 1, 1999
*800-End	(869-042-00044-7)	26.00	Jan. 1, 2000
<b>16 Parts:</b>			
0-999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000-End	(869-038-00046-6)	37.00	Jan. 1, 1999
<b>17 Parts:</b>			
1-199	(869-038-00048-2)	29.00	Apr. 1, 1999
200-239	(869-038-00049-1)	34.00	Apr. 1, 1999
240-End	(869-038-00050-4)	44.00	Apr. 1, 1999
<b>18 Parts:</b>			
1-399	(869-038-00051-2)	48.00	Apr. 1, 1999
400-End	(869-038-00052-1)	14.00	Apr. 1, 1999
<b>19 Parts:</b>			
1-140	(869-038-00053-9)	37.00	Apr. 1, 1999
141-199	(869-038-00054-7)	36.00	Apr. 1, 1999
200-End	(869-038-00055-5)	18.00	Apr. 1, 1999
<b>20 Parts:</b>			
1-399	(869-038-00056-3)	30.00	Apr. 1, 1999
400-499	(869-038-00057-1)	51.00	Apr. 1, 1999
500-End	(869-038-00058-0)	44.00	<sup>7</sup> Apr. 1, 1999
<b>21 Parts:</b>			
1-99	(869-038-00059-8)	24.00	Apr. 1, 1999
100-169	(869-038-00060-1)	28.00	Apr. 1, 1999
170-199	(869-038-00061-0)	29.00	Apr. 1, 1999
200-299	(869-038-00062-8)	11.00	Apr. 1, 1999
300-499	(869-038-00063-6)	18.00	Apr. 1, 1999
500-599	(869-038-00064-4)	28.00	Apr. 1, 1999
600-799	(869-038-00065-2)	9.00	Apr. 1, 1999
800-1299	(869-038-00066-1)	35.00	Apr. 1, 1999
1300-End	(869-038-00067-9)	14.00	Apr. 1, 1999
<b>22 Parts:</b>			
1-299	(869-038-00068-7)	44.00	Apr. 1, 1999
300-End	(869-038-00069-5)	32.00	Apr. 1, 1999
<b>23</b>	(869-038-00070-9)	27.00	Apr. 1, 1999
<b>24 Parts:</b>			
0-199	(869-038-00071-7)	34.00	Apr. 1, 1999
200-499	(869-038-00072-5)	32.00	Apr. 1, 1999
500-699	(869-038-00073-3)	18.00	Apr. 1, 1999
700-1699	(869-038-00074-1)	40.00	Apr. 1, 1999
1700-End	(869-038-00075-0)	18.00	Apr. 1, 1999
<b>25</b>	(869-038-00076-8)	47.00	Apr. 1, 1999
<b>26 Parts:</b>			
§§ 1.0-1.60	(869-038-00077-6)	27.00	Apr. 1, 1999
§§ 1.61-1.169	(869-038-00078-4)	50.00	Apr. 1, 1999
§§ 1.170-1.300	(869-038-00079-2)	34.00	Apr. 1, 1999
§§ 1.301-1.400	(869-038-00080-6)	25.00	Apr. 1, 1999
§§ 1.401-1.440	(869-038-00081-4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501-1.640	(869-038-00083-1)	27.00	<sup>7</sup> Apr. 1, 1999
§§ 1.641-1.850	(869-038-00084-9)	35.00	Apr. 1, 1999
§§ 1.851-1.907	(869-038-00085-7)	40.00	Apr. 1, 1999
§§ 1.908-1.1000	(869-038-00086-5)	38.00	Apr. 1, 1999
§§ 1.1001-1.1400	(869-038-00087-3)	40.00	Apr. 1, 1999
§§ 1.1401-End	(869-038-00088-1)	55.00	Apr. 1, 1999
2-29	(869-038-00089-0)	39.00	Apr. 1, 1999
30-39	(869-038-00090-3)	28.00	Apr. 1, 1999
40-49	(869-038-00091-1)	17.00	Apr. 1, 1999
50-299	(869-038-00092-0)	21.00	Apr. 1, 1999
300-499	(869-038-00093-8)	37.00	Apr. 1, 1999
500-599	(869-038-00094-6)	11.00	Apr. 1, 1999
600-End	(869-038-00095-4)	11.00	Apr. 1, 1999
<b>27 Parts:</b>			
1-199	(869-038-00096-2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
200-End	(869-038-00097-1)	17.00	Apr. 1, 1999	260-265	(869-038-00151-9)	32.00	July 1, 1999
<b>28 Parts:</b>				266-299	(869-038-00152-7)	33.00	July 1, 1999
0-42	(869-038-00098-9)	39.00	July 1, 1999	300-399	(869-038-00153-5)	26.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999	400-424	(869-038-00154-3)	34.00	July 1, 1999
<b>29 Parts:</b>				425-699	(869-038-00155-1)	44.00	July 1, 1999
0-99	(869-038-00100-4)	28.00	July 1, 1999	700-789	(869-038-00156-0)	42.00	July 1, 1999
100-499	(869-038-00101-2)	13.00	July 1, 1999	790-End	(869-038-00157-8)	23.00	July 1, 1999
500-899	(869-038-00102-1)	40.00	<sup>8</sup> July 1, 1999	<b>41 Chapters:</b>			
900-1899	(869-038-00103-9)	21.00	July 1, 1999	1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1900 to 1910.999)	(869-038-00104-7)	46.00	July 1, 1999	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
1910 (§§ 1910.1000 to end)	(869-038-00105-5)	28.00	July 1, 1999	3-6		14.00	<sup>3</sup> July 1, 1984
1911-1925	(869-038-00106-3)	18.00	July 1, 1999	7		6.00	<sup>3</sup> July 1, 1984
1926	(869-038-00107-1)	30.00	July 1, 1999	8		4.50	<sup>3</sup> July 1, 1984
1927-End	(869-038-00108-0)	43.00	July 1, 1999	9		13.00	<sup>3</sup> July 1, 1984
<b>30 Parts:</b>				10-17		9.50	<sup>3</sup> July 1, 1984
1-199	(869-038-00109-8)	35.00	July 1, 1999	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
200-699	(869-038-00110-1)	30.00	July 1, 1999	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
700-End	(869-038-00111-0)	35.00	July 1, 1999	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
<b>31 Parts:</b>				19-100		13.00	<sup>3</sup> July 1, 1984
0-199	(869-038-00112-8)	21.00	July 1, 1999	1-100	(869-038-00158-6)	14.00	July 1, 1999
200-End	(869-038-00113-6)	48.00	July 1, 1999	101	(869-038-00159-4)	39.00	July 1, 1999
<b>32 Parts:</b>				102-200	(869-038-00160-8)	16.00	July 1, 1999
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	201-End	(869-038-00161-6)	15.00	July 1, 1999
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	<b>42 Parts:</b>			
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	1-399	(869-038-00162-4)	36.00	Oct. 1, 1999
1-190	(869-038-00114-4)	46.00	July 1, 1999	400-429	(869-038-00163-2)	44.00	Oct. 1, 1999
191-399	(869-038-00115-2)	55.00	July 1, 1999	430-End	(869-038-00164-1)	54.00	Oct. 1, 1999
400-629	(869-038-00116-1)	32.00	July 1, 1999	<b>43 Parts:</b>			
630-699	(869-038-00117-9)	23.00	July 1, 1999	1-999	(869-038-00165-9)	32.00	Oct. 1, 1999
700-799	(869-038-00118-7)	27.00	July 1, 1999	1000-end	(869-038-00166-7)	47.00	Oct. 1, 1999
800-End	(869-038-00119-5)	27.00	July 1, 1999	<b>44</b>	(869-038-00167-5)	28.00	Oct. 1, 1999
<b>33 Parts:</b>				<b>45 Parts:</b>			
1-124	(869-038-00120-9)	32.00	July 1, 1999	1-199	(869-038-00168-3)	33.00	Oct. 1, 1999
125-199	(869-038-00121-7)	41.00	July 1, 1999	200-499	(869-038-00169-1)	16.00	Oct. 1, 1999
200-End	(869-038-00122-5)	33.00	July 1, 1999	500-1199	(869-038-00170-5)	30.00	Oct. 1, 1999
<b>34 Parts:</b>				1200-End	(869-038-00171-3)	40.00	Oct. 1, 1999
1-299	(869-038-00123-3)	28.00	July 1, 1999	<b>46 Parts:</b>			
300-399	(869-038-00124-1)	25.00	July 1, 1999	1-40	(869-038-00172-1)	27.00	Oct. 1, 1999
400-End	(869-038-00125-0)	46.00	July 1, 1999	41-69	(869-038-00173-0)	23.00	Oct. 1, 1999
<b>35</b>	(869-038-00126-8)	14.00	<sup>8</sup> July 1, 1999	70-89	(869-038-00174-8)	8.00	Oct. 1, 1999
<b>36 Parts:</b>				90-139	(869-038-00175-6)	26.00	Oct. 1, 1999
1-199	(869-038-00127-6)	21.00	July 1, 1999	140-155	(869-038-00176-4)	15.00	Oct. 1, 1999
200-299	(869-038-00128-4)	23.00	July 1, 1999	156-165	(869-038-00177-2)	21.00	Oct. 1, 1999
300-End	(869-038-00129-2)	38.00	July 1, 1999	166-199	(869-038-00178-1)	27.00	Oct. 1, 1999
<b>37</b>	(869-038-00130-6)	29.00	July 1, 1999	200-499	(869-038-00179-9)	23.00	Oct. 1, 1999
<b>38 Parts:</b>				500-End	(869-038-00180-2)	15.00	Oct. 1, 1999
0-17	(869-038-00131-4)	37.00	July 1, 1999	<b>47 Parts:</b>			
18-End	(869-038-00132-2)	41.00	July 1, 1999	0-19	(869-038-00181-1)	39.00	Oct. 1, 1999
<b>39</b>	(869-038-00133-1)	24.00	July 1, 1999	20-39	(869-038-00182-9)	26.00	Oct. 1, 1999
<b>40 Parts:</b>				40-69	(869-038-00183-7)	26.00	Oct. 1, 1999
1-49	(869-038-00134-9)	33.00	July 1, 1999	70-79	(869-038-00184-5)	39.00	Oct. 1, 1999
50-51	(869-038-00135-7)	25.00	July 1, 1999	80-End	(869-038-00185-3)	40.00	Oct. 1, 1999
52 (52.01-52.1018)	(869-038-00136-5)	33.00	July 1, 1999	<b>48 Chapters:</b>			
52 (52.1019-End)	(869-038-00137-3)	37.00	July 1, 1999	1 (Parts 1-51)	(869-038-00186-1)	55.00	Oct. 1, 1999
53-59	(869-038-00138-1)	19.00	July 1, 1999	1 (Parts 52-99)	(869-038-00187-0)	30.00	Oct. 1, 1999
60	(869-038-00139-0)	59.00	July 1, 1999	2 (Parts 201-299)	(869-038-00188-8)	36.00	Oct. 1, 1999
61-62	(869-038-00140-3)	19.00	July 1, 1999	3-6	(869-038-00189-6)	27.00	Oct. 1, 1999
63 (63.1-63.1119)	(869-038-00141-1)	58.00	July 1, 1999	7-14	(869-038-00190-0)	35.00	Oct. 1, 1999
63 (63.1200-End)	(869-038-00142-0)	36.00	July 1, 1999	15-28	(869-038-00191-8)	36.00	Oct. 1, 1999
64-71	(869-038-00143-8)	11.00	July 1, 1999	29-End	(869-038-00192-6)	25.00	Oct. 1, 1999
72-80	(869-038-00144-6)	41.00	July 1, 1999	<b>49 Parts:</b>			
81-85	(869-038-00145-4)	33.00	July 1, 1999	1-99	(869-038-00193-4)	34.00	Oct. 1, 1999
86	(869-038-00146-2)	59.00	July 1, 1999	100-185	(869-038-00194-2)	53.00	Oct. 1, 1999
87-135	(869-038-00146-1)	53.00	July 1, 1999	186-199	(869-038-00195-1)	13.00	Oct. 1, 1999
136-149	(869-038-00148-9)	40.00	July 1, 1999	200-399	(869-038-00196-9)	53.00	Oct. 1, 1999
150-189	(869-038-00149-7)	35.00	July 1, 1999	400-999	(869-038-00197-7)	57.00	Oct. 1, 1999
190-259	(869-038-00150-1)	23.00	July 1, 1999	1000-1199	(869-038-00198-5)	17.00	Oct. 1, 1999
				1200-End	(869-038-00199-3)	14.00	Oct. 1, 1999
				<b>50 Parts:</b>			
				1-199	(869-038-00200-1)	43.00	Oct. 1, 1999
				200-599	(869-038-00201-9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
600-End .....	(869-038-00202-7) .....	37.00	Oct. 1, 1999
CFR Index and Findings			
Aids .....	(869-038-00047-4) .....	48.00	Jan. 1, 1999
Complete 1998 CFR set .....		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued) .....		247.00	1998
Individual copies .....		1.00	1998
Complete set (one-time mailing) .....		247.00	1997
Complete set (one-time mailing) .....		264.00	1996

<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>5</sup> No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

<sup>7</sup> No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

<sup>8</sup> No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.